

MESSAGE
OF
THE PRESIDENT OF THE UNITED STATES,
IN ANSWER TO

A resolution of the Senate respecting the Isthmus of Tehuantepec.

JUNE 11, 1858.—Read. Motion to print referred to the Committee on Printing.

JUNE 12, 1858.—Report in favor of printing submitted, considered, and agreed to.

To the Senate of the United States:

In answer to the resolution of the Senate of the 19th ultimo, respecting the Isthmus of Tehuantepec, I transmit herewith a report from the Secretary of State, with the documents by which it is accompanied, together with the copy of a letter from the Postmaster General of the 24th ultimo to the Department of State.

JAMES BUCHANAN.

WASHINGTON, *June 11, 1858.*

DEPARTMENT OF STATE,
Washington, June 11, 1858.

The Secretary of State, to whom was referred that branch of the resolution of the Senate of the 19th ultimo, requesting the President "to inform the Senate whether any efforts have been made or authorized by the executive department, or any officer thereof, to induce the government of Mexico to annul or impair the grant of February 5, 1853, for the construction of a plank road and railroad across the isthmus of Tehuantepec, as recognized in the treaty published at Washington, on the 30th of June, 1854, and to obtain a new grant of the same, or like character, for other parties; and, if so, that he communicate the names of those parties, together with the terms, conditions, and considerations of the grant, and all the correspondence connected therewith," has the honor to lay before the President the papers mentioned in the list subjoined.

Respectfully submitted,

LEWIS CASS.

The PRESIDENT.

List of documents.

1. Mr. Letcher to Mr. Webster, (extract,) April 25, 1852.
2. Same to same, (extract—enclosures,) no date.
3. Mr. Rich to same, (extract,) August 31, 1852.
4. Mr. Conrad to Mr. Conkling, (extract,) October 14, 1852.
5. Mr. Conkling to Mr. Everett, (extract,) November 23, 1852.
6. Same to same, (extract,) February 2, 1853.
7. Same to same, (extract,) same date.
8. Same to same, (extracts,) February 3, 1853.
9. Same to same, (extract—enclosures,) February 6, 1853.
10. Same to same, (extract—enclosures,) February 22, 1853.
11. Mr. Hargous to Mr. Marcy, May 7, 1853.
12. Mr. Conkling to same, (extract,) May 14, 1853.
13. Mr. Marcy to Mr. Gadsden, (extract,) July 15, 1853.
14. Mr. Gadsden to Mr. Marcy, (extract—enclosure,) April 5, 1856.
15. Mr. Hargous to same, April 21, 1856.
16. Mr. Marcy to Mr. Forsyth, (extract,) August 16, 1856.
17. Mr. Forsyth to Mr. Marcy, (enclosure,) November 15, 1856.
18. Mr. Cass to Mr. Forsyth, (enclosure,) July 17, 1856.
19. Mr. Forsyth to Mr. Cass, (extracts—enclosures,) September 15, 1856.

Mr. Letcher to Mr. Webster.

[Extract.]

No. 5.]

LEGATION OF THE UNITED STATES OF AMERICA,
Mexico, April 25, 1852.

SIR: Since the rejection of the Tehuantepec treaty I have held no intercourse with the minister of foreign relations. I am satisfied, however, that the administration and congress are anxious to escape from the consequences of the act which they have perpetrated, and that they will adopt some plan of legislation by which the right of way will be granted. I think I may say they are determined on this course.

The first plan proposed in congress was to grant to a Mexican company the right to construct a way of communication. The stock was to be divided into shares of \$1,000 each. This company was to be under the control of the government. The second proposition was to authorize the president to make a contract with any company for the construction of the way of communication.

The first scheme was withdrawn, and the second did not receive a moment's consideration.

The president then advised the congress, in secret session, through his minister, to take the entire control of the subject, promising to co-operate in any contract which they might adopt. In consequence of

this communication, the proposals of Mr. Sloo, an American citizen, were introduced, which have been received, as I have been informed, with considerable favor. I have the honor, herewith, to transmit a copy of the proposition of Mr. Sloo.

It was stated in congress, and confirmed by the administration, that all the requisitions in regard to Tehuantepec contained in the annual message of the President of the United States should be complied with; and that if Mexico should be coerced to do more by the strong arm of power, the responsibility of the consequences would not then rest upon her. * * * * *

I have the honor to be, sir, your obedient servant,

R. P. LETCHER.

Hon. DANIEL WEBSTER,
Secretary of State.

[Translation.]

The undersigned, A. G. Sloo, in view of the great existing necessity for establishing an interoceanic communication between the Atlantic and Pacific waters by the Isthmus of Tehuantepec, asks of the Mexican republic, for himself and his associates, a privilege upon the following bases:

ARTICLE 1. The communication through the Isthmus of Tehuantepec shall be opened, in the first place, by means of a wagon road, constructed either of wood or of stone, and when the wants of travellers or the transportation of goods require it there shall either be built a railway or a canal.

ARTICLE 2. When the road shall be passable, its transit must be considered as neutral and common to all nations that are at peace with Mexico.

ARTICLE 3. The execution of the work shall be on account of A. G. Sloo and his associates, who will enjoy the exclusive privilege for a period of forty years after the road shall have been completed.

ARTICLE 4. The construction of the plank or stone road shall be commenced within a year, counting from the date of the privilege, and completed in as short a space of time as possible.

ARTICLE 5. There shall be granted to the contracting company one league of land on each side of the line of communication, with the liberty to take from any of the lands belonging to the republic such timber, stone, limestone, or other materials, as may be required for the construction of said road. In case the lands to the extent of one league on each side of the line should belong to private individuals, the latter shall be indemnified, agreeably to the provision of the Mexican constitution.

ARTICLE 6. The transit duties which may be fixed upon goods or passengers shall go to the contractors for the period of forty years, at the end of which, all such duties shall belong to the Mexican government.

ARTICLE 7. Two-fifths of the net produce of the tolls or transit

duties upon goods and passengers shall, for the period of forty years, belong to the government of Mexico, and the same shall be paid to it every six months or annually. For the period of forty years after the road has become the property of the government the latter shall pay to the contractors the same two-fifths of the net produce.

ARTICLE 8. The Mexican government, as well as the contractors, may each respectively appoint agents, superintendents, and mediators, (interventores,) to see that the revenue of the roads is punctually collected.

ARTICLE 9. The exclusive right of navigating the river Coatzacoalcos shall form part of the privilege for opening the way of communication.

ARTICLE 10. The following articles shall be exempt from duties, viz: timber, screw pins, canvas and iron hoops, worked stone and wooden houses, as well as such provisions as, in the opinion of the collector of customs, shall be deemed necessary for the exclusive support of the laborers employed in the construction of the road.

ARTICLE 11. All steam vessels employed in carrying the mail and passengers exclusively shall be exempt from tonnage duties.

ARTICLE 12. The Mexican government shall not be at liberty to impose more transit duties during the existence of the privilege than such as may be established by consent of the company, without any injury accruing to the capital which may be employed in the republic, either directly or indirectly.

ARTICLE 13. The government shall open at each extremity of the Isthmus such ports as it may deem suitable to the interests of the public treasury, and shall locate at every point where it thinks it expedient to do so custom-house officers, and such guards of safety as it may consider necessary for the protection of the revenue and the security of the interests of the nation.

ARTICLE 14. The government shall pledge itself to protect the company in the peaceful prosecution of the work, and guaranty to the latter quiet and undisturbed possession of the same during the whole term of the privilege, at the expiration of which the route, in the condition in which it may then be found, its interests, stations, and all that properly belongs to the same, shall become the property of the Mexican republic.

ARTICLE 15. All differences which may arise between the government and the contractors shall be adjusted by the supreme court of justice.

ARTICLE 16. Mexico shall preserve sovereign jurisdiction over all the territory across which the communication may be established; and this territory can neither be sold nor transferred, nor pledged away, either whole or in part, to any foreign nation.

ARTICLE 17. Should the contractors think proper to establish colonies of foreign families, they will have to subject themselves to the existing laws of the republic which govern the matter, or to those which may be enacted in future by the general congress.

RAMON ARISTA,
MANUEL PAYNO.

MEXICO, *April 23*, 1852.

Mr. Letcher to Mr. Webster.

[Extract.]

No. 8] LEGATION OF THE U. S. OF AMERICA,
MEXICO, —, —.

SIR: * * * * *

Congress adjourned *sine die* on the night of the 21st instant, having passed a bill authorizing the government to make a contract, subject to their approval, with some company, giving Mexican citizens the preference, to open a way of communication between the two oceans across the Isthmus of Tehuantepec.

A copy of the bill, as it passed, marked No. 3, is herewith enclosed.

I enclose also copies of a memorial and proposals to undertake the work, made in behalf of Col. Sloo, an American citizen, by his agents, all of whom are Mexican citizens.—(Marked No. 4.)

It is said that the government will probably close the contract upon the terms specified in the proposals. But upon this subject I do not pretend to be accurately informed, as I have constantly refused, since the rejection of the treaty, to hold any conversation with Mr. Ramirez, or any one else, in regard to any new scheme.

I have maintained the same ground I occupied when the treaty was rejected, without giving up one inch.

I am told there is a secret article, which is to form a part of the contract, in case it goes into effect, binding Col. Sloo to stand between Mexico and the New Orleans company, and to pay all just claims which that company may have against Mexico, growing out of the rejection of the treaty. I may not be accurately advised, but such is said to be the purport of the article.

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I have the honor to be, sir, your obedient servant,
R. P. LETCHER.

Hon. DANIEL WEBSTER,
Secretary of State.

[Translation.]

The most excellent the president of the republic has been pleased to address to me the following decree:

“Mariano Arista, president of the United Mexican States, to the inhabitants of the republic, know ye that the general congress has decreed as follows:

“ARTICLE 1. The government shall enter into a contract, or shall promote the formation of a company of native citizens, who shall, in both cases, be preferred to foreigners, or of both natives and foreigners, for the purpose of opening, by canal, railroad, or wagon road, a way of communication between the Atlantic and Pacific oceans by the Isthmus of Tehuantepec. The government shall not execute the con-

tract which it may make until the same shall have been first approved by the general congress.

"ARTICLE 2. The government, in order to make use of the power granted to it in the preceding article, shall be subject to the following conditions:

"1st. That the contract which is entered into shall not contain any clause which, through the rights it grants, may countenance reclamations of foreign governments against the republic, or impair, in any respect, the full and speedy exercise of its sovereignty in the said Isthmus of Tehuantepec.

"2d. That, in order to lend to the undertaking the most efficient and constant protection, the government may be one of the copartners.

"3d. That the interoceanic communication by the Isthmus shall be free and open to all the nations of the globe.

"4th. That, in order to render firm and perpetual the advantages of the communication, the government may negotiate with those powers which are allied to the republic by treaty, for the express recognition of neutrality of the passage by the Isthmus in case of war.

"MARIANO YAÑEZ,

"President of the Chamber of Deputies.

"GABRIEL SAGAZETA,

"President of the Senate.

"FRANCISCO ENCISCO,

"Deputy Secretary.

"GERÓNIMO ELIZONDO,

"Senator Secretary.

"Wherefore, I order it to be printed, published, circulated, and given due fulfilment.

"Palace of the national government at Mexico, May 14, 1852.

"MARIANO ARISTA.

"To Don José F. RAMIREZ."

And I communicate it to you for your knowledge and consequent purposes.

God and liberty. Mexico, May 15, 1852.

RAMIREZ.

[Translation.]

The law which empowers the government to enter into a contract or to promote the formation of a company, native, foreign, or mixed, for the purpose of opening, by canal, railroad, or wagon road, a way of communication between the Atlantic and Pacific oceans by the Isthmus of Tehuantepec, having been published, we, the subscribers, have drawn up the proposals which we enclose to your excellency, and trust that you will examine them and take them into consideration.

We have preferred to form a mixed company rather than one entirely Mexican, because we think that this will render the work more

practicable; there will be more capital invested in it; a greater number of interests will work in its favor; and the enterprise will go forward with more rapidity and perfection to its completion. To limit ourselves solely to what the country itself can give, in view of its present resources and circumstances, would, in our opinion, be to deprive ourselves of many efficacious means of realizing our idea, and perhaps to condemn ourselves to never seeing it realized.

The conditions which our proposition contains are entirely harmonious with the law, and no one who considers them impartially will fail to acknowledge the advantages which they offer to the nation. The nation accords to the undertaking the plenitude of its sovereignty; it possesses for a certain time a part of its profits; the absolute property finally remains with it; and the foreign stockholders renounce every right or pretension which is not equally granted to Mexicans.

It would have been easy to form a company entirely Mexican in name, and to have its shares afterwards pass to foreigners, thus enabling a mixed enterprise, or one entirely foreign, to appear to be altogether Mexican, and to obtain rights in preference to any other company; but such a course not being proper we abstained from following it, being persuaded that the truth must manifest itself at all events. We will not omit to make here one observation, which is, that when a company is once organized, the transfer of its stock from one set of hands to another indiscriminately cannot be prevented, and that what was purely Mexican at its origin may become mixed or foreign afterwards. In order to reach such an end, it would be necessary to provide that, when the shares were all taken by citizens of the republic, in no case could they be transferred to any one unless he had the same qualities—a prevention which it would be impossible to carry into effect, both because it would be an attack on property, and because it would occasion great obstructions in the common order of civil affairs.

Your excellency will be pleased to receive this proposition, and to report the same to the most excellent the president. We do not doubt that, upon a careful examination of it, it will obtain his respectable approval as well as that of the august chambers. If so, he will share with us the satisfaction of having promoted a work of benefit to the world, and of advantage and honor to Mexico; we being subject, in all respects, to its laws, and in perfect agreement with its supreme authorities.

We proffer to your excellency the assurances of our high consideration.

God and liberty. Mexico, March 15, 1852.

MANUEL PAYNO,
RAMON OLARTE,
Agents for A. G. Sloo.
JOAQUIN PESADO,
FRANCISCO ARANGOIZ.

[Translation.]

Contract entered into between the supreme government of the republic, of the one part, and Joaquim Pesado and Francisco Arangoiz, representatives of a Mexican company, and Ramon Olarte and Manuel Payno, agents of A. G. Sloo, of the other part, for the opening and construction of a way of communication between the waters of the Gulf of Mexico and those of the Pacific ocean, by the Isthmus of Tehuantepec.

ARTICLE 1. The contractors bind themselves to carry into effect the way of communication, making it by water as far as possible, and constructing from such point the roads which will be mentioned in article 13.

ARTICLE 2. The government grants to the contractors and to their associates the exclusive privilege of navigating the river Goatzacoalcos for the whole time established by the present contract; but all the inhabitants and owners of lands and other property situated on the bank of the river can import such articles as they need, and export their agricultural or manufactured products, in vessels of Mexican construction.

ARTICLE 3. It also grants to the contractors and their partners, by way of donation, a strip of land, one league wide, on each side of the road which is opened, if the lands should be of the public domain; but if they should belong to private persons, only the ground necessary shall be taken, its owners being indemnified according to law.

ARTICLE 4. The contractors may take, gratis, from the lands of the public domain any material which may be necessary for the construction of the road or of its appurtenances, and for its preservation.

ARTICLE 5. Such materials can also be taken from the grounds of private persons, but on indemnifying the owners, in conformity to article 112 of the constitution.

ARTICLE 6. During the time that this contract lasts, the contractors shall enjoy the exclusive privilege of transportation by the way of communication, and, consequently, can collect tolls, transit duties, and storage, and any other charges for carrying merchandise, or the prices of passage, agreeably to the tariff which shall be approved by the government; and the government cannot exact an impost or contribution of any kind, either on the transit of merchandise, on passengers, or on the capital invested in the undertaking.

ARTICLE 7. The government exempts from tonnage duty the company's steam vessels, which, sailing under the Mexican flag, may be appointed to convey correspondence and merchandise in transit.

ARTICLE 8. The company can import, free of duties, the materials and implements necessary for the construction and preservation of the road and its appurtenances, previously obtaining the permission of the government, through its inspector, with a memorandum of the articles which it is proposed to import. In can also introduce, upon the same conditions, goods which cannot be obtained on the Isthmus, and which may be needed by the laborers and persons employed in the labors of the road, for their subsistence and clothing.

ARTICLE 9. The liberty granted to the company for the transportation of merchandise shall be subject to the regulations which the government may prescribe, it being understood that with such liberty is not granted that of selling the merchandise at any point on the Isthmus.

ARTICLE 10. The government shall open the navigable and coast-wise ports which may be necessary for the better service of the way of communication, which ports are to be selected by the contractors.

ARTICLE 11. The privileges which the government grants shall be valid and exclusive for the contractors and their partners during the whole time that the contract lasts.

ARTICLE 12. The government will protect, with its whole power, the prosecution, preservation, and security of the works.

ARTICLE 13. The contractors bind themselves to commence a plank road from the point at which the river Goatzacoalcos may not be navigable, and leading towards the Pacific, within the year at which the present contract is dated, and to finish such plank road within three years from its commencement; to commence the construction of a railroad within a year from this last date, and to finish said railroad in six years after; it being requisite in both cases that the contractors shall give seasonable notice to the government of the works having been commenced and of their having been finished.

ARTICLE 14. If the company should not comply with the obligations imposed by the preceding article within the periods prescribed, it shall lose its privilege, and the works which shall have been commenced, the accumulations of materials, implements, machines, and any other utensils which may have been gathered on its territory, shall inure to the benefit of the nation without indemnity therefor, and the company shall, moreover, incur a fine of two hundred thousand dollars, which it guaranties in conformity to what is prescribed in article 24; but the periods mentioned shall be suitably extended in case of war, pestilence, shipwreck, or of the occurrence of any other fortuitous event.

ARTICLE 15. The company also binds itself to construct the wharves and docks which may be necessary for the service of the way of communication at the ports which are newly established at the extremities of the road.

ARTICLE 16. The company binds itself to establish a line of steamers, under the Mexican flag, conformably to the laws of the country, to run from Vera Cruz to the point at which the river Goatzacoalcos may not be navigable, and from which the road or railway is to start.

ARTICLE 17. The company binds itself to convey, free of expense, the correspondence which may come for any point of Mexico, and that which is sent thence to other points where its steamers may touch, receiving and delivering it with the customary formalities; in like manner, it will convey all goods and articles which may be the property of the government at half of the tariff rates. Likewise, it will convey without any charge, going and returning, the officers, troops, employés, or agents of the general government or of the States. The metals and agricultural and manufacturing products of the republic will be conveyed at 25 per cent. less than the tariff price, and its citizens at 20 per cent. less.

ARTICLE 18. The company will exert itself to have the Pacific steamers continue making Acapulco their depository of stone coal, and it binds itself to examine, as soon as possible, the coal mines in the State of Guerrero, with a view of working them by means of contracts with their respective owners.

ARTICLE 19. For forty years, reckoning from the day on which the tariff mentioned in article 6 goes into execution, the Mexican government shall annually receive forty-five per cent. of the net receipts of the road, and for forty years more, reckoning from the conclusion of the first forty, the government shall annually receive sixty per cent. of the net revenues of the road, and for both periods the privileges granted shall be valid and exclusive, and cannot be changed, except by mutual consent; and at the end of that time the Mexican government shall enter into full and absolute possession of the road, with all its trains, implements, and appurtenances, on the footing which they may have had at the time of their greatest augmentation, it being understood that these, as well as the road, are to be delivered unincumbered and in perfectly serviceable condition, the old cars, machines, and utensils to be not more than half worn, but it is not understood that the vessels and steamers are to be included.

ARTICLE 20. The government and the company, each in its own behalf, can appoint comptrollers in proportion to the interests they respectively represent, in order to supervise, inspect, and explain the accounts of the road during the term of their respective rights.

ARTICLE 21. The company obligates itself to observe the following restrictions:

1st. The company cannot build fortresses on the isthmus, nor organize military forces of any kind. It shall not give passage to any armed force, either Mexican or foreign, without express authority from the government.

2d. The company cannot establish colonies on the lands which are granted, unless with the consent of the government, being subject to the regulations which it may prescribe for such case, and to the general provisions of the laws.

3d. The company shall immediately dismiss from its service any person who shall be engaged in or who shall protect smuggling, and it shall assist the government in suppressing it.

4th. The company will endeavor to have every passenger observe the custom-house laws of the republic.

ARTICLE 22. The differences which may arise between the government and the company, or any of its copartners, shall be decided, in the last resort, and upon final judgment, by the supreme court of justice, in conformity to the laws; but the copartners who are foreigners cannot allege any kind of right or privilege which is not enjoyed by Mexicans. In order further to obviate any difficulties which may arise on this account, it is agreed that neither the company nor its members shall be able to alienate the whole or a part of their shares to any foreign government, and that if they should do so, they will lose by the very fact what is alienated, it accruing to the shares of the government in the character of a fine. Neither can they enter into any kind of contract or agreement with a foreign government or

its subjects when the effect of the contract entered into with them would be to create a right which would be objectionable or different from that expressed in this article.

ARTICLE 23. The transit by the way of communication shall be free for all the inhabitants of the globe ; but the merchandise proceeding from countries which shall not have recognized by treaty the neutrality of the isthmus shall pay 25 per cent. more than the merchandise proceeding from the countries which have entered into such stipulation.

ARTICLE 24. In order to guaranty the execution of the stipulations contained in this contract, the contractors will deposit \$500,000 in a bank of the United States, or will give security for that amount, on the responsibility of this contract, to the satisfaction of the minister plenipotentiary of Mexico in that republic ; it being observed that, in case of the guaranty going into effect, it will be limited to the amount deposited or given as security, without any further responsibility on the part of the copartners.

MEXICO, *May 15, 1852.*

Mr. Rich to Mr. Webster.

[Extract.]

No. 20.]

LEGATION OF THE UNITED STATES,
Mexico, August 31, 1852.

SIR : *

* * * * *

The time for receiving bids for the Tehuantepec road has been again further postponed to the 30th August, and it is said these postponements are made for fear of the United States, and that this government is anxiously waiting to hear from the United States to know what are the intentions of our government in relation to the Garay grant.

There were four sealed letters sent in yesterday for proposals for opening the Tehuantepec road ; the result will not be known for a day or two.

* * * * *

I am, sir, with great respect, your obedient servant,

WILLIAM RICH,
Chargé d' Affaires ad int.

Hon. DANIEL WEBSTER,
Secretary of State, Washington.

Mr. Conrad to Mr. Conkling.

[Extract.]

No. 4.]

DEPARTMENT OF STATE,
Washington, October 14, 1852.

SIR: * * * * *

A few general instructions are all that are necessary for your guidance:

A communication affording a cheap and rapid means of transporting passengers and merchandise across the Isthmus of Tehuantepec has long been considered an object of great importance to the commercial world. To the United States in particular it is difficult to estimate the value of such a communication. Mr. Trist, who was first appointed commissioner to negotiate a treaty of peace with Mexico, was authorized to offer a large sum if she would agree merely to put our citizens and government upon the same footing as her own in regard to crossing the Isthmus by any communication then existing or thereafter to be constructed. The proposition was rejected by Mexico, on the ground that she had, several years before, transferred all her right in regard to this right of way to one of her own citizens, (a Mr. Garay,) who had subsequently assigned them to British subjects. The British subjects alluded to transferred all their rights to the grant to certain persons, and the same have now passed to an association of American citizens, by whom it is now held. This association have taken measures to construct a railway across the isthmus. With the knowledge and consent of Mexico a survey was made for that purpose, which resulted in the discovery of an excellent harbor on the Pacific, the existence of which appears to have been heretofore unknown, and the want of which had always been thought to present an insuperable obstacle to the success of the undertaking. The enterprise was found to be in other respects of easier accomplishment than had been supposed. Unwilling, however, to embark their capital in this undertaking without the guaranty of their own government, they applied to it for that purpose. Your predecessor was accordingly instructed to propose to Mexico a treaty on this subject. The proposal was acceded to, and on the 22d day of June, 1850, a treaty was negotiated, by which, among other stipulations, Mexico virtually recognized the validity of the grant; but the provisions containing this recognition not being as explicit as it was desirable they should be, it was sent back to Mexico for amendment, without having been submitted to the Senate. A new convention was made, which was approved by the Senate and ratified by the President of the United States, and was returned to Mexico to receive the assent of that government. Before it was submitted to the Mexican congress, however, that body adopted a decree by which they declared a formal decree, (of the Dictator Salas,) on which the validity of the original grant depended, to be null and void. The convention was subsequently rejected by the same body. In the mean time those who were engaged in making the survey were compelled, by an order from the Mexican

government, to leave the Isthmus before the survey was quite completed. It is understood a law has recently been passed by the Mexican congress authorizing the President to contract for the construction of a road across the Isthmus with any one who may undertake it. The above is a brief history of this negotiation. For more minute information on the subject you are referred to the correspondence between the two governments, to be found in the archives of the legation, and in a pamphlet recently printed by order of the Senate, with a copy of which you have been furnished.

Mexico having rejected the convention and repudiated the grant, and having made no proposition whatever, either to our minister there or through her representative here, this government cannot consistently, with a due regard to its own dignity, make any overtures to renew the negotiation. Nevertheless, this government anxiously desires that some arrangement should be made whereby the communication across the Isthmus may be established, and would listen to any reasonable proposition for that purpose. If, therefore, any such proposition should be made, you will receive and transmit it without delay. It is impossible to anticipate what form such a proposition may assume. I would suggest, however, that this government would advise the holders of the grant not to insist upon a literal compliance with its terms, and if there be any clauses in it particularly obnoxious to the Mexican government or people, those clauses might possibly be dispensed with or essentially modified.

You will therefore endeavor to ascertain what are the real objections to the grant, and whether and how they could be obviated or removed. It is understood that the grant of so large a portion of her territory is very objectionable to that government. If so, it might possibly be exchanged for some suitable equivalent, such as a prolongation of the privileges beyond the period mentioned in the grant. It is possible the pride of the nation might be wounded by a direct recognition of the grant. If so, this difficulty might be obviated by a direct cession of the right of way to the United States.

You will bear in mind that the great and paramount object of this government is to obtain a right of way across the Isthmus. If this object can be attained through the grant to Garay, it would, in justice to the holders of that grant, prefer accomplishing it in that way. It will in no event do any act to prejudice their rights against Mexico, growing out of said grant; but, if all the efforts of the government to obtain a recognition of the grant should be unsuccessful, it cannot permit the existence of a right which Mexico refuses to recognize, to present an insuperable obstacle to the prosecution of an enterprise in which the whole people of the United States are so deeply interested. In case, therefore, no proposition should be made to you based upon the recognition of this grant, and you should perceive no indications of a favorable change in the views or action of the government relative thereto, you will cautiously sound the government, with a view to ascertain, if practicable, whether it would be willing, on any and on what conditions, to cede the right of way to the United States, taking care, however, to say nothing which may lead it to infer that Congress

may not, as intimated by the report of the committee of the Senate, determine to enforce the performance of the grant.

It may be well to state that Mexico has always professed to be anxious to open the communication, and it is said the President, by virtue of the decree of Congress above referred to, has recently advertised for proposals for a contract for that purpose. * *

Supposing, however, that government to be sincere in these professions, it is believed that the object can never be accomplished by Mexican capital, and that no *foreign* capitalists will embark in so great an undertaking without some other guaranty for the protection of their rights than the power and good faith of the Mexican government.

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C. M. CONRAD,
Acting Secretary.

ALFRED CONKLING,
&c., &c., &c.

Mr. Conkling to Mr. Everett.

[Extract.]

No. 1.]

LEGATION OF THE UNITED STATES,
Mexico, November 23, 1852.

SIR : * * * * *

Congress has been in session since the 15th of last month ; and ever since about the time of my arrival the project of an interoceanic communication across the Isthmus of Tehuantepec has occupied no inconsiderable share of the attention both of the executive and legislative branches of the government, as well as of the public at large.

After the adoption and abandonment in succession of various inconsistent modes of deciding upon the proposals invited by the government for executing this important work, they have at length been formally opened and referred to the chamber of deputies ; but it having been discovered that some of them had been, in fact, made known long ago, and additional ones received from those who possessed this knowledge, it has just been decided to receive new proposals from those who had a right to complain of this breach of good faith, and they are availing themselves of this license. Of the means resorted to, and, as it is said, openly invited by the deputies to obtain votes, I abstain from speaking.

* * * * *

I have the honor to be, very respectfully, sir, your obedient servant,
A. CONKLING.

The honorable the SECRETARY OF STATE, *Washington.*

Mr. Conkling to Mr. Everett.

[Extract.]

No. 14]

LEGATION OF THE UNITED STATES,
Mexico, February 2, 1853.

SIR : * * * * *

I regret that the incessant agitation, for three months past, (in itself a great moral and political evil,) of the Tehuantepec question, has even yet led to no practical result, though it is now confidentially said that a contract for the construction of a railroad across the Isthmus is likely to be concluded in a few days with an American citizen named Sloo, and "his associates," and that I shall be invited to negotiate with the Mexican government a convention designed to secure the successful prosecution of the work, and its beneficial use when completed. Whether this expectation is to be fulfilled is a question concerning which I shall not hazard an opinion. Should it be verified, I should regard it as so great a misfortune to have the proposed negotiation postponed indefinitely, on account of the supposed want of authority in our minister here to entertain it, that, although my instructions on the subject were not framed with a view to the contingency of a new contract for the execution of the proposed work, and are not therefore in terms applicable to such a case, I think I shall venture, keeping steadily in view the spirit of my instructions, and the policy of the government as manifested in its past acts relative to the subject, to engage in the proffered negotiation without awaiting further instructions, which, however, it is in my opinion of vital importance that I should receive as soon as they can be prepared after the terms of the new contract shall be made known to our government.

* * * * *

I have the honor to be, very respectfully, sir, your obedient servant,
ALFRED CONKLING.

Hon. EDWARD EVERETT,
Secretary of State, Washington.

Mr. Conkling to Mr. Everett.

[Extract.]

No. 15]

LEGATION OF THE UNITED STATES, MEXICO,
February 2, 1853, at night.

SIR: After closing my accompanying despatch, No. 14, I received, through the secretary of the legation, an oral message from Mr. Arroyo, the acting minister of foreign relations, to the effect that a contract between the Mexican government and Mr. Sloo, for the construction of a railway across the Isthmus of Tehuantepec, would certainly be signed in the course of a very few days, and that the Mexican minister at Washington would be immediately so informed.

Such an instrument is known to have been prepared and drawn up in form by legal gentlemen by order of the president, several days ago, and to have ever since been before the president, by whom it has been most carefully revised and corrected. Its provisions have been the subject of so much anxious thought and earnest discussion that it seems reasonable to conclude that they are well adapted to the interesting and important end in view. I think it probable that a copy or abstract of it will be forwarded at once to Mr. Larrainzar.

It having thus become my duty at the eleventh hour [the courier leaves at an early hour to-morrow morning] to advert again to this subject, I avail myself of the opportunity to subjoin a word of explanation relative to my observation, contained in the accompanying despatch, of my intention not to decline to enter into a negotiation on the subject, should I be invited to do so.

My apprehension touching the principle on which the government of the United States saw fit to interpose in this affair after the assignment of the Garay contract to American citizens, (the New Orleans company,) is this: Not that the government considered itself under any *obligation* to these assignees, at their instance, and for their gratification or profit, thus to make themselves parties to this contract, in its nature primarily, and, as Mexico has always insisted, exclusively, cognizable in the Mexican judicial tribunals; but that the United States, without violating any principle of international law, might, at their option, insist on the recognition by Mexico of the rights claimed by these assignees, and in doing so, might further insist on stipulations from the Mexican government, deemed necessary to the accomplishment of the great enterprise in view, and to its practical utility when completed; and that considering the vast importance of the work to the whole American people, it was fit and proper for their government to avail itself of the opportunity thus presented, to interpose in the manner it did. If I am right in my interpretation of the past official language and acts of the government on this subject, it would seem to follow that I should be fully warranted, by the spirit of my instructions, in concluding such a treaty with the Mexican government, relative to the new contract, as the government of the United States deemed it proper to offer with regard to the Garay grant. *

* * * * *

I have the honor to be, with great respect, sir, your obedient servant,
ALFRED CONKLING.

Hon. EDWARD EVERETT,
Secretary of State, Washington.

Mr. Conkling to Mr. Everett.

[Extracts.]

No. 16.]

LEGATION OF THE UNITED STATES,
Mexico, February 3, 1853.

SIR: By the British courier, which left Mexico at an early hour this morning for Vera Cruz, I transmitted two despatches, Nos. 14

and 15, prepared yesterday and last night, to be carried to Washington by Mr. Yturvide, whom I appointed bearer of despatches for that purpose, and who had already left town for Vera Cruz.

These despatches were very hastily written, and under adverse circumstances, as therein stated and explained. In number 14, adverting to the probability of my being invited before long to negotiate a convention with the government of Mexico relative to the construction of a transit way across the Isthmus of Tehuantepec, I took occasion to observe that, under the peculiar circumstances of the case, I should feel myself warranted in accepting such an invitation. After closing that despatch at a late hour of the day, I received an oral message from the acting minister of relations, inferring a very high degree of probability that a contract would be entered into by his government within two or three days for the opening of this transit way. Deeming it to be my duty to communicate this fact to you, I prepared despatch No. 15 for that purpose, and availed myself of the occasion to add some explanatory remarks touching the observation I have mentioned contained in my despatch No. 14.

* * * * *

On the receipt of my instructions, &c., the day before my embarkation at New York, I read them and laid them aside. Finding, on my arrival here, the condition of things I have described, I saw no reason for reverting to those parts of my instructions which relate to the Tehuantepec transit way and the 11th article of the treaty of peace, and accordingly left them to sleep in their repository. * *

It thus happened that I was obliged to write on the subject without referring to my instructions, and with little reflection relative to the subject, though I was not altogether unmindful that it was not quite safe to do so. On recurring to it to-day, and examining my instructions and powers, I deeply regret to find that the impression under which I wrote that I was fully authorized to conclude a convention with this government on the subject, as well of Tehuantepec as of Indian depredations, is unfounded, my full powers being limited to the making of a treaty upon this latter subject, while in regard to the former I am only directed to receive and transmit to your department any proposition relative thereto which might be offered by the Mexican government.

* * * * *

I have the honor to be, very respectfully, sir, your obedient servant,

ALFRED CONKLING.

Hon. EDWARD EVERETT,
Secretary of State, City of Washington.

Ex. Doc. 72—2

Mr. Conkling to Mr. Everett.

[Extract.]

No. 18.]

LEGATION OF THE UNITED STATES,
Mexico, February 6, 1853.

SIR: In my despatches Nos. 14 and 15, which I had the honor very recently to transmit to the Department of State, I gave you reason to expect that a contract for the construction of a transit way across the Isthmus of Tehuantepec would very soon be entered into by the Mexican government. It is now my duty to inform you that, although very serious doubts subsequently arose and continued until within the last 24 hours whether this expectation would be verified, the contract is at length concluded.

I transmit herewith, marked A, a copy of a communication received at a late hour last night, announcing this result, and also a copy, marked B, of the correspondent decree, a printed copy of which I received from the minister of foreign relations this morning, accompanied by a note, a copy whereof, also marked B, I have the honor likewise to enclose. The contract itself I have not seen. I am promised a good translation of it as soon as it can be made, and will, without delay, forward a copy of it to your department.

I transmit also, herewith, a copy of my note of this morning, in answer to the two notes above mentioned. I am not sure it may not appear to you that, in speaking as I have done of the conduct of the president, I have departed from the strict line of official duty, and it is due to myself, therefore, to state that in an interview with the president, at his instance, two days since, and at a very trying crisis, we had a free conversation on the subject of the Tehuantepec question, in the course of which I became convinced that he was governed by the motives and acting in the spirit described in my note, and I am quite sure, situated as he is, that what I have written will be very grateful to his feelings, and I am not without hope that it may strengthen him in his responsible, harrassing, and, I am sorry to add, still somewhat precarious position. You will observe that I have expressed my willingness to "receive overtures." In assuming that I have authority to do this, although a contingency has arisen not contemplated by my instructions, I trust I am not mistaken in supposing that I have the requisite authority. * * * * *

I have the honor to be, with very high respect, sir, your obedient servant,

ALFRED CONKLING.

Hon. EDWARD EVERETT,
Secretary of State, Washington.

Mr. Arroyo to Mr. Conkling.

[Translation.]

NATIONAL PALACE, MEXICO,
February 5, 1853.

The undersigned, chief clerk, at present in charge of the office of the secretaryship of relations, has the honor of addressing this communication to his excellency Alfred Conkling, envoy extraordinary and minister plenipotentiary of the United States of America, to inform him that, in pursuance of the law passed by the general congress on the 14th day of May, 1852, and the edict published in consequence thereof on the 29th of July, of the same year, his excellency the president *ad interim*, in the exercise of the powers with which he is invested, has deemed it good to agree to and direct the preparation of the necessary legal document approving the propositions relating to the opening of an interoceanic communication through the Isthmus of Tehuantepec submitted to him, in the name of a mixed company, by Messrs. Ramon Olarte, Don Manuel Payno, and Don José Joaquin Pesado, in behalf of A. G. Sloo & Company.

Together with the gratification which he experiences in communicating to his excellency Mr. Conkling a resolution which must be acceptable to the whole civilized world, the undersigned entertains a hope that his excellency, seconding the wishes of his excellency the president of the republic, will immediately transmit it to his government, duly impressing it with the appreciation of the fact, and that his excellency will, as the best proof of his approbation, be the first to give his assent to the speedy conclusion of a treaty of neutrality, which shall hold out to all the nations of the globe advantages of immense value, and at the same time draw more closely the relations of peace and friendship which now unite the two neighboring republics.

The undersigned, therefore, has the honor to renew to his excellency the minister plenipotentiary of the United States the assurances of his distinguished consideration.

J. MIGUEL ARROYO.

His Excellency ALFRED CONKLING,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America.*

Mr. Arroya to Mr. Conkling.

[Translation.]

NATIONAL PALACE,
Mexico, February 5, 1853.

The undersigned, chief clerk in charge of the department of relations, has the honor of enclosing to his excellency Mr. Alfred Conkling copies of the decree issued by his excellency the president *ad interim* of the republic, approving the propositions for the opening of the interoceanic communication through the Isthmus of Tehuantepec, alluded to in his note of this date, addressed to his excellency,

and at the same time of tendering to him renewed assurances of his very distinguished consideration.

J. MIGUEL ARROYO.

His Excellency ALFRED CONKLING,
*Envoy Extraordinary and Minister Plenipotentiary
 of the United States of America.*

[Translation.]

DEPARTMENT OF FOREIGN RELATIONS.

His excellency the president *ad interim* of the Mexican republic has been pleased to address me the following decree :

The president *ad interim* of the Mexican United States to the inhabitants of the republic, be it known : That, considering that the opening of the Isthmus of Tehuantepec has come to be not only a commercial requirement for the whole world, but also a political necessity for the preservation of the integrity and sovereignty of our territory ;

Considering that from the non-settlement of the question within the narrowing period of time, which is still left to adjust it with every element of independence and dignity, it might, perhaps, be involved and blended with political questions, and the republic herself in serious complications, which will result in detriment to all her inhabitants ;

And considering, lastly, that the approval of the propositions of the mixed company, with which those of Oajaca and Garcia, and the States of Oajaca, Tabasco, and Chiapas, have been united, will not only result in great material well being to the nation, but that they will also, and in a peaceable, quiet, and honorable manner, settle the questions to which the subject has given rise ; I have, in the exercise of the powers with which I find myself invested, and in pursuance of the law of the 14th of May, 1852, and of the edict published in consequence thereof on the 29th of July, deemed it proper to decree the following :

SINGLE ARTICLE: Approved, together with the modifications and explanations, which appear in the act of this date, which shall be published, the propositions for the opening of the interoceanic way of communication through the Isthmus of Tehuantepec, submitted by the mixed national and foreign company, under the name of A. G. Sloo.

Wherefore, I order that the foregoing shall be printed, published, and circulated, and that it be carried into due effect.

Palace of the national government, in Mexico, on the fifth day of February, 1853.

JUAN BAUTISTA CEBALLOS,
 A. D. J. MIGUEL ARROYO.

And this I communicate to you for your information, and for its consequent effects.

God and liberty, Mexico, February 5, 1853.

J. MIGUEL ARROYO.

Translation of the Sloo contract for the opening of and communication through the Isthmus of Tehuantepec, entered into on the one part in the name of the supreme government of the Mexican republic, by the most excellent Mr. Jos Miguel Arroyo, chief clerk, with the charge of decrees of the department of foreign and domestic relations, and, for the time being, entrusted with the business of said department; and, on the other part, by Mr. William D. Lee, empowered by Messrs. A. G. Sloo and his associates, and by Messrs. Ramon Olarte, Manuel Payno, and José Joaquin Pesado, for the Mexican partners and contractors interested in the enterprize of the inter-oceanic communication of Tehuantepec, and representatives of the whole company, which, under the style of Mixed Company, assumes the aforesaid opening and communication upon itself, in agreement with the companies known as those of Oajaca and of D. Felipe Garcia and associates, and with the authorized agents of the States of Chiapas, Tabasco, and Oajaca, under the following articles to which they have agreed; the supreme government exercising the power conferred upon it by the law of the 14th of May, 1852, and of the further powers granted to it by the decree of the 11th of January last:

1. The means of communication shall be carried on by water, in the navigable part of it that may exist; and where the latter ends with the Coatzacoalcos river, there shall the roads referred to in article 2 commence.

2. The contractors bind themselves to commence a plank road at such point as the Coatzacoalcos ceases to be navigable, in the direction of the Pacific, in a year after the closing of this contract, and to complete it in three years after its commencement; to begin the construction of a railroad in a year, reckoning from the last date, and completing the same, with all the requisite machinery and trains, within the four years following, and to advise the supreme government, in both cases, of the commencement and of the completion of the work.

3. The line of direction of the road shall be such as competent engineers may lay down as the most practicable from shortness of distance and for facility of construction, starting from the point at which, after due examination, the Coatzacoalcos ceases to be navigable.

4. The grantees shall, at their own cost, and in the new ports which the government may open at the two *termini* of the route, build such wharves and embankments as may be necessary for the communication way.

5. The government grants to the company the land required for the carriage and railroad, the wharves, embankments, storehouses, depots, stations, sheds for stages and other vehicles, and hotels for passengers; but should the lands of the public domain prove insufficient for all the aforesaid requirements, those of private individuals shall be taken for such purposes, the owners being indemnified therefor in conformity with the laws.

6. The company will be at liberty to take, without compensation,

from the lands of the public domain, all materials whatsoever which may be required for the construction of the road, or of its appurtenances, and for its preservation, [repairs.]

7. Such materials may be taken from the lands of private individuals also, but the owners shall be indemnified therefor in conformity with the law.

8. During the time for which this contract shall hold the company shall enjoy the exclusive privilege of transportation through this way of communication, and they shall, consequently, have power to collect tolls, transit and storage dues, and what other rate soever for freight on merchandise or passage fare, in conformity with the bill of rates which the government shall approve, which government shall not have the power to levy either impost or contribution of any kind, either on the transit of merchandise, or on the passengers, or on the capital invested by the company; but it does reserve to itself the right given to it by article 32 of the edict, which says to the letter: "The government binds itself not to impose any contribution or tax on the road, on the merchandise and passengers that may go upon such road, or on the capital invested therein; but it will have the power to impose an additional duty on packages and passengers, at a rate not to exceed one real, the whole proceeds thereof reverting to itself."

9. The company shall have the power to import duty free the materials and utensils necessary for the construction and preservation of the road, and of its appurtenances, on permission previously obtained from the government, through the channel of said government's inspector, furnished with a note of the objects which it is proposed to import. It will also have the power to import, under the aforementioned conditions, objects not procurable on the Isthmus, and which, in the way of supplies and clothing, may be required by the workmen and *peons* engaged in the works of the road.

10. The franchise granted to the company for the transportation of merchandise will be subject to such regulations as the government may make; it being understood that, by such franchise, the right is not granted to said company to distribute them for consumption at any point of the Isthmus.

11. The supreme government will open the seaports, and those for the coasting trade, which may be necessary for the better service of the communication road, there being, for the present, none other than the port of Vera Cruz, on the Gulf of Mexico, and that of Ventosa, on the Pacific. This latter port shall be solely used for the reciprocal transit of passengers and merchandise.

12. The privileges which the government grants shall be binding and exclusive in behalf of the company for the whole period of the duration of this contract.

13. The government will apply all its power to the prosecution, preservation, and security of the works.

14. The fulfilment of this contract to the satisfaction of the supreme government is guaranteed by a sum of \$300,000, (three hundred thousand dollars,) real money, which the representatives of the company shall pay in cash, within the terms which the supreme government may provide, and, in addition, fifty thousand dollars monthly,

until the making up of the sum total of \$600,000, (six hundred thousand dollars.) The latter \$300,000 (three hundred thousand dollars) shall bear interest at six per cent. per annum, since the former three hundred thousand dollars shall be delivered without any interest as a guaranty for the present contract. But both amounts, with the interest attached to the latter three hundred thousand dollars, from the date of their delivery, respectively, until the extinguishment of the capital and the interest which may accrue, shall be paid to the company through the one-half of the first proceeds to which the government may be entitled; the general treasury furnishing to said company as its security the certificates, bonds, or necessary documents for the above mentioned sum of \$600,000, (six hundred thousand dollars.) The periods stipulated in articles 14 and 15 of the edict shall be prudently extended by the government in case of shipwreck or other uncontrollable cause, the tenor of said articles being as follows:

"ART. 14. The execution of the contract to the satisfaction of the government is guaranteed under a stipulated penalty, which shall not be less than two hundred thousand dollars. This amount shall be secured by the deposit of the money or specie, or by mortgages, or by securities given in conformity with law. The grantee shall incur the penalty of forfeiting the expenses incurred, the materials and implements found within the territory of the republic, and his rights under the contract, if he shall not begin and complete the carriage road, and if he shall not begin the railroad, within the stipulated periods.

"ART. 15. Upon the beginning of the work on the railroad, the deposit made by the grantee shall be returned to him, or the obligation in which the stipulated penalty may consist shall be cancelled; but if, after it will have been begun, he do not complete it within the periods assigned, he will incur the penalties above expressed, except that of the fine, and he will only have the right of being considered as a partner in the value of the rails, trains, cars, and other materials imported from abroad: *Provided*, That their original cost, with the expenses added, shall exceed two hundred thousand dollars, for if they should prove to be less he shall also incur the penalty."

15. The company binds itself to convey to any point bordering upon the road, and free from cost, such mails as are to pass over said road, receiving and delivering them in the usual forms. It shall, in like manner, transport all articles and effects belonging to the government at one-fourth of the rate of prices; it shall also convey, going and returning, without any compensation whatsoever, the officers, troops, employes, or agents of the general government or of the States. Metals and agricultural and industrial products of the republic shall be transported for twenty-five per cent. less than charged by the tariff of prices.

16. For fifty years, reckoning from the day when the tariff of rates mentioned in article 8 will have been carried into effect, the government of Mexico shall receive twenty per cent. of the net proceeds of the road. During the whole of that period all the privileges contained in this contract shall be valid and exclusive, nor shall they be altered except by mutual consent; and at the expiration of the period mentioned the government will go into full and absolute possession of the

road, with all its trains, (which, at the least, must be such as are necessary to convey five hundred passengers daily, and ten thousand arrobas of freight,) its utensils and appurtenances; it being understood that both these and the road are to be delivered in running and perfect condition for service; the rails, cars, engines, and utensils being required to be, at least, of average fitness for use, and not including herein the vessels and steamers. In order not to elude the delivery of the road, and all its utensils mentioned in the preceding clause, the company binds itself to deposit through the last ten years ten per cent. of the net proceeds belonging to them, which deposit shall be returned to them immediately upon the government's receiving, to its satisfaction, all the objects mentioned in said preceding clause.

17. The existence of light-houses at the two extremities of the road, and also on the reef of the Alacraves, as an additional one in the port of Acapulco, being a matter of the highest necessity for the vessels navigating in the direction of the intercommunication way; and it being equally necessary for the development of the resources of the republic and for the construction of vessels that the bar of the Goatzacoalcos, as well as the bed of said river, should, if practicable, be deepened, the company shall set aside, annually, to make those improvements, upon plans approved by the government, two and a half per cent. of the net yield of the road, until such works will have been completed. The light-houses, being once constructed, shall belong exclusively to the government.

18. The government and the company, each in its own behalf, will have the power to appoint representatives, in proportion to the interests which they may respectively exhibit, to watch over, examine and state the accounts of the road during the existence of this contract. The government, representing not more than the fifth part of the whole product, will be considered, for its representation, in the light of clause 24 of the edict, which says: "The government shall be considered as a stockholder to an amount of, at least, the third part of the whole of the shares into which the undertaking may be divided."

19. The company binds itself to the observance of the following restrictions: 1st. It shall not be lawful for the company to construct forts on the Isthmus, nor to organize military forces of any kind. It shall not afford passage to any armed force, whether national or foreign, without express authority from the government. 2d. The company shall not introduce on the lands which it may occupy, in relation to all that is said in article 5, a greater number of persons than that which shall be necessarily required for their operations in all of their branches. 3d. The company shall forwith dismiss from its service any, whomsoever, of its employés that shall carry on, or protect, smuggling, or shall commit any other misdemeanor; and it shall afford the government every assistance in their prosecution. 4th. The company will cause every passenger to observe the revenue laws of the republic.

20. Foreigners engaging in the undertaking shall be subjected to the provisions of articles 21 and 22 of the edict, which say to the letter: "Art. 21st. Those foreigners who may take share in the mixed company, whether as stockholders, or under any other title

that should give them the right of interfering therein, of sharing in its proceeds or claiming any of its grants, shall not hold greater rights than shall the Mexicans, nor other means of enforcing them than those that are granted to the latter by the laws of the republic. All questions of this nature, and such as may arise out of the acquisition, preservation, or loss of shares in or rights over the said road, shall be decided by the competent national courts, in conformity with the laws of the republic. The employés and officers of the company shall be subject to the same conditions. Art. 22. The person or persons who may contract for the opening of the road shall not have the right of transferring or conveying the grant without previous consent obtained from the government, or of taking in either a government or a State as a copartner. A violation of any of those conditions will work as a nullity of the grant, and the Mexican government shall have the right of disposing of it at will, saving the shares lawfully acquired by the individual stockholders."

21. The transit across the inter-communication way shall be free to all the inhabitants of the globe; but an additional rate of twenty-five per cent. shall be laid on the merchandises of those nations which will not have entered into conventions of neutrality with Mexico.

22. So soon as the company may have been organized, an office for the issue of bonds shall be established in Mexico; another shall, likewise, be opened in London, or in any other mart of Europe, and during a period, which shall not be less than six months, one-third at least of all the shares shall be held at the disposal of such Mexican citizens as may choose to become subscribers to the stock.

23. The company shall have the privilege of transporting the foreign mails over the intercommunication way, in sealed bags; and such bags shall be sealed by the agents of the post office, or by the collectors of the several custom-houses.

24. The company shall not have the power of selling or of conveying shares to the States of the confederacy, in exchange for waste lands or for services of Indians.

25. The company accept, as an indispensable condition, all the articles of the edict published by the supreme government, under date of the 29th of July, of the year last past, that do not clash with or stand in contradiction to the spirit, the text, and the letter of the present contract.

NAVIGATION.

ARTICLE 1. The supreme government grants to the contractors and to their associates the exclusive privilege of navigating the Goatzacoalcos river during the whole period assigned for the existence of this contract; but all the inhabitants and owners of plantations, or of any other property situated on the banks of the river, shall have the power of importing all such articles as they may require, and exporting their agricultural or industrial products in vessels of Mexican build.

ARTICLE 2. The government releases from duties on tonnage all the steamers of the company intended for the transportation of mails and merchandise *in transitu*.

ARTICLE 3. The company binds itself to the establishment of a line

of steamers, equal to the service of the intercommunication way, under the Mexican flag, in accordance with the laws of the land, to ply from Vera Cruz to such point of the Goatzacoalcos river where the railroad shall start.

ARTICLE 4. The company engages to transport, free of cost, such mail matter as may be intended for any point whatsoever of Mexico, and such as may be sent thence to the other points where its steamers may touch, receiving and delivering it in the usual form; to convey likewise all articles and effects, the property of the government, for one-fourth of the established rates; to transport, also, without any compensation, going and returning, the officers, troops, employés, and agents of the general government or of the States. The metals, the agricultural or industrial products of the republic shall be transported for twenty-five per cent. less than the established rates of prices.

ARTICLE 5. The company shall see that the steamers on the Pacific side shall continue to keep their coal depot at Acapulco, and it binds itself to an examination, as speedy as possible, of the coal beds of the State of Guerrero, in order that they may be worked under agreement with their owners respectively.

ARTICLE 6. For due fulfilment of all that is contained and embraced in this contract, the supreme government will come to an understanding, through its agents or attorneys, with the representatives of the mixed company, mentioned in the caption of this instrument, or such as may hereafter be their successors.

J. MIGUEL ARROYO,
M. PAYNO,
W. D. LEE,
JOAQUIN PESADO,
RAMON OLARTE.

MEXICO, *February 5, 1853.*

Mr. Conkling to Mr. Arroyo.

LEGATION OF THE UNITED STATES.

Mexico, February 6, 1853.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, loses no time in replying to the note which he had the honor to receive, at a late hour last evening, from his excellency Mr. Arroyo, acting minister of foreign relations, announcing the long delayed decision, now made by his excellency the president of the republic of Mexico, in obedience to the law enacted by the general congress on the 14th of May last, and of the *convocatoria* promulgated in pursuance thereof on the 29th of July last, having for their object the speedy construction of a transit way across the Isthmus of Tehuantepec, for the purpose of facilitating the communication between the Atlantic and Pacific oceans.

Deeply impressed as the undersigned is with the vast importance of this noble enterprise, he fully concurs with his excellency Mr. Arroyo in the opinion that this decision cannot fail to be gratifying to the

whole civilized world; and fully aware as the undersigned is of the numerous and almost insuperable difficulties which surrounded the subject, and of the patriotic and self-sacrificing spirit and the firmness and integrity of purpose with which his excellency the president has encountered and at length overcome these difficulties, the undersigned cannot doubt that his excellency the president has secured for himself the merited gratitude of his country and the applause of all commercial nations.

The undersigned will hasten to communicate to his government the decision and decree of his excellency the president; and in the meantime will be happy, in accordance with the invitation contained in his excellency Mr. Arroyo's note, and with his own instructions to receive from this government any overtures likely to result, as the undersigned earnestly hopes they may, in a treaty suited to the exigencies of the case and adapted to secure the happy fruits so eloquently described by his excellency Mr. Arroyo.

The undersigned also has the honor to acknowledge the receipt, this morning, of the note of his excellency Mr. Arroyo, enclosing printed copies of the decree in question.

The undersigned has great satisfaction in renewing to his excellency Mr. Arroyo, the assurances of his high respect and distinguished consideration.

ALFRED CONKLING.

His Excellency J. MIGUEL ARROYO,
Acting Minister of Relations.

Mr. Conkling to Mr. Everett.

[Extract.]

No. 23.]

LEGATION OF THE UNITED STATES,
Mexico, February 22, 1853.

SIR: *

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Last evening I received from the acting minister of relations a note, of which I have the honor to enclose a copy, marked A, and to which I this morning returned an answer, of which I transmit a copy, also marked A.

I earnestly hope, and with considerable confidence trust, that in the line of conduct I have deemed it to be my duty to adopt relative to the projected transit-way across the Isthmus Tehuantepec, I have not had the misfortune to contravene the sentiments of my government, nor to appear to you to have assumed an undue degree of responsibility.

The considerations by which I have been governed will have been already sufficiently indicated in my former despatches, and I will only add that if I have erred it has not been for want of deliberate and mature reflection, or of an anxious desire to discern and follow the path of duty.

The prospect of being able to conclude a favorable treaty continues

to be propitious; and, with respect to the propriety of adopting the policy I have taken the liberty in my former despatches to recommend, of fully empowering me at once, under such additional instructions as may be thought necessary, to act in the premises, I may be permitted to mention the fact, in addition to the considerations I have already had the honor to suggest, that I am informed directly and indirectly of an earnest wish on the part of the Mexican government, that the negotiation may be consummated before my departure from the country.

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I have the honor to be, very respectfully, sir, your obedient servant,
ALFRED CONKLING.

Hon. EDWARD EVERETT,
Secretary of State.

Mr. Arroyo to Mr. Conkling.

NATIONAL PALACE,
Mexico, February 21, 1853.

The undersigned, chief clerk of the department of relations, seasonably received the note which his excellency Mr. Alfred Conkling, envoy extraordinary and minister plenipotentiary of the United States of America, did him the honor of addressing him on the 6th instant, in which, in answer to the note of this department of the day preceding, in relation to the decree issued, and the contract signed for the opening of an intercommunication way through the Isthmus of Tehuantepec, his excellency stated that, in pursuance with the instructions which he holds, and upon the invitation of the undersigned, he would take pleasure in proceeding to a negotiation for the arrangement of a treaty, guarantying the neutrality of the right of transit across said road, and securing the fruitful results which it is bound to yield to the world.

The undersigned has brought said note to the knowledge of his excellency the trustee-general of the supreme executive power, and his excellency, anxious to attain so laudable an end, and to promote, to the extent of his ability, whatever may contribute to confirm the friendly relations which exist between Mexico and the United States, and place them on a solid and lasting footing, such as considerations of expediency and reciprocal benefits, has appointed their excellencies General D. José Maria Fornel and D. Joaquin Maria de Castillo y Lanzas, plenipotentiaries of the republic, to proceed in the negotiation with Mr. Conkling of the treaty to which reference has been made.

The undersigned flatters himself that his excellency will consider this measure as a new proof of the friendly sentiments which actuate Mexico in regard of the United States, and that, with the acknowledgment of the like sentiments on his part, his excellency will take pleasure in carrying to a successful close a negotiation as philanthropic

in its objects as it must be important in its results to both countries in view of the advantages which it is to secure for them.

The undersigned has the honor of tendering to his excellency renewed assurances of his distinguished consideration.

J. MIGUEL ARROYO.

His Excellency ALFRED CONKLING,
*Envoy Extraordinary and Minister Plenipotentiary
 of the United States of America.*

Mr. Conkling to Mr. Arroyo.

LEGATION OF THE UNITED STATES,
Mexico, February 22, 1853.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, hastens to acknowledge the receipt last evening of the note of his excellency Mr. Arroyo, communicating to the undersigned the information that his excellency General Lombardine, depository of the supreme executive power of the Mexican republic, had been pleased to appoint two highly distinguished citizens, viz: D. José Maria Fornel, general of division, and D. Joaquin Maria de Castillo y Lanzas, plenipotentiaries of the republic to negotiate with the undersigned a treaty relative to the projected transit way across the Isthmus of Tehuantepec.

The undersigned has the honor to repeat to his excellency Mr. Arroyo the assurance contained in his former note referred to by Mr. Arroyo of his readiness to enter at once upon the proposed negotiation; and, to that end the undersigned will be glad to receive from the gentleman above named, as soon as may be agreeable to them, propositions for a treaty such as Mr. Arroyo has described, and which shall be best adapted, by means of well devised guaranties on the part of the two republics, not only to secure the speedy and proper completion and beneficial use of the noble work in contemplation, but which, by drawing Mexico and the United States into more intimate association, shall have the happy effect also of augmenting and perpetuating their mutual good will and promoting their prosperity and happiness.

The undersigned avails himself with pleasure of this opportunity to offer to Mr. Arroyo the renewed assurance of his high consideration.

ALFRED CONKLING.

His Excellency J. MIGUEL ARROYO,
Acting Minister of Relations.

Mr. Hargous to Mr. Marcy.

NEW YORK, May 7, 1853.

SIR: You will probably have been informed, by papers in your department, of my connexion with the grant of the Mexican government to Garay, for the construction of an interoceanic communication across the Isthmus of Tehuantepec. This connexion began in Feb-

ruary, 1849, as you will see by a petition of mine to the Senate, in which I prayed Congress not to commit themselves irrevocably to any other route, in authorizing contracts for carrying the mail to California. My petition undoubtedly attracted the notice of Mr. de la Rosa, the vigilant and astute Mexican minister, at Washington, who must have informed his government of it, and warned them of the supposed danger of allowing United States citizens to become the proprietors of the grant. That these warnings alarmed the Mexican government, and led to a resolution on their part to nullify the grant, was soon confirmed by my correspondents at Mexico. I lost no time in making this known to Mr. Clayton, then Secretary of State, who addressed an instruction on the subject to Mr. Clifford, then our minister at Mexico, directing him to inform that government that ours would hold them accountable for any unjust discriminations against United States citizens, who might be holders of the Garay grant. When Mr. Letcher succeeded Mr. Clifford, he was instructed to make a treaty with the Mexican government upon the subject of Tehuantepec. He was also officially instructed to apply for passports for the engineers who had been employed by the American proprietors to survey the route, and the passports were granted. Mr. Letcher concluded a treaty upon the subject. By one of its articles, however, it was stipulated that it should not be submitted either to our Senate or to the Mexican congress, without the consent of the proprietor of the grant. As some of the articles seemed to me ambiguous, I could not conscientiously give this consent, and so informed Mr. Webster, then Secretary of State. The treaty was consequently sent back to Mexico for amendment, but few of those deemed by me necessary were made. In its amended form, however, I consented to its presentation to our Senate, whose sanction it received, and was ratified by President Fillmore. Soon after the amended treaty was concluded Mr. Letcher returned home on leave of absence. He had scarcely left the City of Mexico when a bill was brought into the Mexican congress proposing a repeal of the Garay grant, on the ground that Salas, who succeeded Paredes as temporary president of Mexico, transcended his authority in prolonging the time for the commencement of the works on the Isthmus under the grant. I have no legal proof of the fact, but from my knowledge of Mexican affairs, and from the tenor of the letters of my correspondents, copies of which are on file in your department, I am morally certain that this measure was originated and consummated principally through the influence of the British minister at Mexico. The Mexican congress having thus repealed the Garay grant, the treaty of that government with ours for the protection of Americans interested in that grant of course fell to the ground.

Besides the foreign influences brought to bear against that grant, I am sorry to say that there were several combinations of our own citizens also, as will appear by Mr. Letcher's communication to Mr. Webster, under date the 14th December, 1851. This is made a high misdemeanor by act of Congress, and one of the offenders was indicted at Washington, and probably would have been convicted if

President Arista had not refused to give up the original of a letter which he had addressed to him on the subject.

Independently of the grant, I have already expended over a quarter of a million of dollars out of a limited private fortune. I have made this expenditure in consequence of assurances from my government that it would protect my rights and interests.

Mr. A. G. Sloo, however, has obtained a new contract from the Mexican government, and, as I am informed, Mr. Conkling, the United States minister at Mexico, has made a treaty with that government, recognizing that contract and guarantying the neutrality of the Isthmus. Notwithstanding all this, I hope that I may still rely with confidence enough upon the protection of my government to feel assured that the treaty referred to will not be accepted by the President, especially if it be true that our minister had neither authority nor instructions to conclude it.

An answer upon this point, as prompt as your convenience will allow, will greatly oblige your obedient humble servant,

P. A. HARGOUS.

Hon. W. L. MARCY,
Secretary of State, Washington.

Mr. Conkling to Mr. Marcy.

[Extract]

LEGATION OF THE UNITED STATES,
Mexico, May 14, 1853.

By the steamer Texas, which arrived at Vera Cruz on the 3d instant, news was received of the failure of Mr. Sloo to pay the bills drawn by his agent here in favor of the bankers who advanced the money due to the Mexican government under its grant and contract for the construction of a transit way across the Isthmus of Tehuantepec. It is out of my power adequately to describe the surprise and chagrin occasioned here by these evil tidings. Nothing could have been more unexpected or unaccountable. The news was brought from Vera Cruz by an express in advance of the mail. The letters received by the latter gave information of Mr. Sloo's inability to raise the funds requisite to meet his engagements, but they shed little light upon the cause of his ill success. * * * Hopes are still entertained that this unfortunate delinquency will be repaired; but, as the grant has been hypothecated to the bankers as the only condition on which they would consent to advance their money, as they are men of ample means, * * * The great enterprise in question, already begun, will doubtless be communicated, in conjunction, however, with American citizens, and by the aid of a liberal supply of American on their foreign capital.

I have the honor to be, with great respect, sir, your obedient servant,

ALFRED CONKLING.

Hon. WILLIAM L. MARCY,
Secretary of State, Washington.

Mr. Marcy to Mr. Gadsden.

[Extract.]

No. 3.]

DEPARTMENT OF STATE,
Washington, July 15, 1853.

SIR: * * * * *

During the last administration, this government interested itself in behalf of the assignees of a grant made by Mexico of the right of way from the Atlantic to the Pacific across the Isthmus of Tehuantepec. The privileges of the original grantee had passed, by assignment, to citizens of the United States. A deep interest was felt by our people generally in the object of this grant, and our government interposed to give it effect. It has urged Mexico to respect the rights of the present proprietors of the grant, but she has denied the validity of that grant, and, by a formal decree of her legislature, declared it null and void. There is in the archives of the legation an extensive correspondence on the subject, which will enable you, should it come up for your consideration, to understand the condition of that question. It is not proposed to instruct you at this time to resume this negotiation. Should the President hereafter conclude to do so, his views will be fully made known to you.

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W. L. MARCY.

JAMES GADSDEN, Esq., &c.

Mr. Gadsden to Mr. Marcy.

[Extract.]

LEGATION OF THE UNITED STATES,
Mexico, April 5, 1856.

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I now enclose a communication from the attorney of Peter A. Hargous, esq., claiming to be a native of Pennsylvania and a citizen of the United States, invoking the interposition of this legation to an attempted renewed controversy, for rights and immunities withheld, on the ever belligerent Tehuantepec transit.

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JAMES GADSDEN.

Hon. WM. L. MARCY,
Secretary of State.

Mr. Bellangé to Mr. Gadsden.

MEXICO, *March 31, 1856.*

SIR: In the name of Mr. Peter A. Hargous, a native of Pennsylvania and a citizen of the United States, whose power of attorney has been intrusted to me, I take the liberty of informing you of the following facts, in consequence of which I am obliged to ask your protection to obtain justice from the Mexican government.

On the 5th of February, 1853, the Mexican government granted to Messrs. Payno, Pesado, and Olarte, representatives of a company composed of Mexican and American citizens, a privilege for opening a way of communication by the Isthmus of Tehuantepec. By the 14th article of the above mentioned privilege, the grantees were bound to deliver into the Mexican treasury an amount of \$600,000; but having no funds, they applied to Mr. F. de P. Falconnet, a British subject, to lend the amount required, offering in payment thereof bills drawn by a Mr. W. D. Lee on A. G. Sloo, of the United States. Mr. F. de P. Falconnet accepted the proposal, under condition that Messrs. Payno, Olarte, and Pesado should obtain from the Mexican government a full authorization to pledge the privilege obtained as a warranty of the payment of the bills drawn on the United States to the amount of \$600,000. The Mexican government consented to give the authorization, and the deed, by which the privilege was given as a pledge in case the bills should not be paid, was duly drawn up on the 10th of February, 1853. The 2d article of the deed above mentioned, and approved by the Mexican government, authorized Mr. F. de P. Falconnet, in case the bills drawn on the United States should not be paid, to dispose of the privilege in his favor, or in favor of any one else he thought proper, without the intervention of any judiciary authority. In consequence of the arrangements entered into by the parties interested in the business, the \$600,000 were delivered by Mr. F. de P. Falconnet into the Mexican treasury, and he holds the receipts of the treasurer. The bills drawn by W. D. Lee on A. G. Sloo were sent by Mr. F. de P. Falconnet to the United States, and were not accepted when presented nor paid when due.

I have thought proper to enter into all these details, although I suppose that they must be known to you, merely for the sake of recalling to your memory all the facts relative to this business, and shall proceed to inform you of what happened in consequence.

By a note dated the 2d June, 1853, Mr. Falconnet informed the Mexican government that the bills drawn by W. D. Lee on A. G. Sloo were neither accepted nor paid, and asked to be recognized as the owner of the privilege in compliance with the 2d article of the deed of pledge drawn up on the 10th of February, 1853. The Mexican government gave no answer to this note, or to the others which were subsequently sent by Mr. F. de P. Falconnet.

When Mr. F. de P. Falconnet agreed to lend the \$600,000 he had no other object in view than an exchange business between Mexico and the United States, and never thought of fulfilling the engagements entered into by the grantees of the privilege to open a way of communication by the Isthmus of Tehuantepec; he therefore looked out in the

United States for a capitalist of high standing and sufficient influence to form a company able to repay the \$600,000 advanced by him, and to execute the engagements entered into with the Mexican government by Messrs. Payno, Olarte, and Pesado, in the name of a company which never existed, at least as far as capital is concerned.

In consequence Mr. F. de P. Falconnet entered, on the 16th of April, 1855, into an agreement with Mr. P. A. Hargous, of New York, and made him a formal cession of the privilege. The Mexican government was informed of this circumstance on the 8th of August, 1855, and requested to recognize the legal cession made by Mr. F. de P. Falconnet to Mr. P. A. Hargous.

On the 26th of November, 1855, Mr. F. de P. Falconnet received at last from the Mexican government an answer to the various notes which he had presented. In said answer, it is stated that his excellency General Alvarez, president of the Mexican republic, has decided, in a council of ministers held on the 26th of November last, that Mr. F. de P. Falconnet is recognized as sole owner of the privilege in execution of the 2d article of the deed of pledge consented and authorized by the Mexican government, and signed on the 10th of February, 1853, by Mr. F. de P. Falconnet, and Messrs. Payno, Olarte, and Pesado recognized by the government as sole and lawful agents of the company they represented, and that the cession made by Mr. Falconnet to Mr. P. A. Hargous is not recognized, without stating on what motives this last decision is founded.

Since then all the efforts made by Mr. Falconnet, or his agents, and by me to obtain from the Mexican government the approval of the legal cession of his rights made by Mr. F. de P. Falconnet to Mr. P. A. Hargous have been without any success. Being convinced that it is useless to wait any longer for a favorable decision from the Mexican government, I take the liberty to request you to grant to Mr. P. A. Hargous the protection due him as a citizen of the United States. This appears to me the only course to be followed in this business; the more so as I have been informed, from good authority, that Messrs. Payno, Olarte, and Pesado have, in the name of this imaginary company, applied to government to obtain the entrance to the Goatzacoalcos of an agent sent from the United States to begin a plank road over the Isthmus of Tehuantepec, although all the rights of said company have been forfeited, to all intents and purposes, by the non-execution of the engagements contracted by them with the Mexican government and Mr. F. de P. Falconnet, and although said forfeiture has been declared and corroborated by the decision of the Mexican government of the 26th of November last.

I do not doubt that, informed of the circumstances of the case submitted to you, you will take such measures as will protect, in an effective way, the rights acquired by Mr. P. A. Hargous, and insure his acknowledgment by the Mexican government as owner of the privilege.

I shall feel highly favored by an answer to the present note, and, meanwhile, I remain, sir, your obedient servant,

ALEX. BELLANGÉ.

General JAMES GADSDEN,

Minister Plenipotentiary of the United States.

Mr. Hargous to Mr. Marcy.

WASHINGTON, April 21, 1856.

DEAR SIR: You will probably recollect that in an interview which I had the honor to have with you not long since, I stated that the grant for a right of way across the Isthmus of Tehuantepec, commonly called the Sloo grant, had been forfeited to Mr. F. de P. Falconnet, a British subject. This forfeiture took place pursuant to the consent and with the authority of the Mexican government. It was occasioned by a pledge which was made of the grant to secure Mr. Falconnet the reimbursement of \$600,000, (say six hundred thousand dollars) which he had advanced to that government in behalf of the Sloo company, and which has never been paid, even in part, by that company. In order to secure this great privilege to citizens of the United States, I obtained an assignment of it from Mr. Falconnet, subject to the approval of the Mexican government, but this approval has heretofore been withheld, despite repeated applications. I have every reason to believe that Mr. Gadsden, United States minister to Mexico, has been well aware of the circumstances which I have mentioned, and of all the antecedents respecting this business. Notwithstanding this, however, I have reason to apprehend that the hesitation of the Mexican government in granting my request has been occasioned either by his lukewarmness or by his opposition to me. That I have cause to believe he must have been actuated by the feeling last mentioned, would seem to be shown by the fact that he has addressed representations to the Mexican government in behalf of the Sloo company. I cannot believe that, in this proceeding, Mr. Gadsden has acted either under the instructions or sanction of my government. You will at once see, however, how important it is for me to be relieved from any doubt upon this point; I will consequently thank you to address an answer to me at your earliest convenience.

I have received through the agents of Mr. Falconnet, in Mexico, a copy of the note of Mr. Gadsden to Mr. De la Rosa, the minister for foreign affairs of Mexico, which I inclose for your information, in case the copy which Mr. Gadsden himself will undoubtedly have forwarded to your department should not, by some accident, have reached there.

It will, of course, be obvious to you that as all the rights of the citizens of the United States in the Sloo grant were extinguished by its transfer to Mr. Falconnet, who is a British subject, it must remain in possession of the latter until his transfer to me shall be approved by the Mexican government. It is unquestionably, I should suppose, the policy and the interest of our government that citizens of the United States and not British subjects should have exclusive control of the privilege referred to. If, therefore, the Mexican government shall be countenanced in much longer delaying my request, the danger to the policy and interests to which I have adverted will be subjected is submitted to your wise consideration.

I would have called on you at the department with this communication, but I am suddenly summoned to New York to attend to important private business there. This, however, enables me to avoid

engrossing any of your valuable time in conversation on the subject, at present.

I have the honor to be, with great regard, your most obedient servant,

P. A. HARGOUS.

Hon. W. L. MARCY,

Secretary of State, Washington, D. C.

Mr. Marcy to Mr. Forsyth.

[Extract.]

No. 2.]

DEPARTMENT OF STATE,
Washington, August 16, 1856.

SIR: * * * * * * * *

You are already aware that disputes have arisen among our citizens in regard to the ownership of a grant made by the Mexican government for a right of way across Mexico, called the Tehuantepec route. This is not, strictly speaking, an international matter. You will, however, take occasion to make known to Mexico the deep interest felt by the government and people of the United States in the success and early completion of the enterprise now on foot for opening a passage from the Gulf of Mexico to the Pacific ocean by Tehuantepec, and that it is very much desired that the Mexican government should exert all the legitimate power it has to remove the obstacles which lie in the way of giving effect to that grant. There is no doubt that the establishment of that thoroughfare would be advantageous to both countries in a commercial point of view, and strengthen the ties of friendship between them.

I am, sir, your obedient servant,

W. L. MARCY.

JOHN FORSYTH, Esq.,
&c., &c., &c.

Mr. Forsyth to Mr. Marcy.

No. 8.]

LEGATION OF THE UNITED STATES,
Mexico, November 15, 1856.

SIR: I have the honor to transmit herewith, and at his request, a communication from A. Bellangé, esq., the representative of Mr. P. A. Hargous, on the subject of the Tehuantepec grant.

As I came to Mexico with the determination that this legation, while under my charge, should not be made use of as an attorney's office for either of the rival American claimants for the privileges of this transit, and to take sides with neither in a dispute which, it appeared to me, was one that belonged to the courts of this country to adjudicate, unless I had the positive instructions of my government

to the contrary, I have no remarks to make on this communication, except that he does not give the precise version of my reply to him when he called upon me as the American minister to espouse the cause of his client, and to throw my official influence against that of the Sloo or Mixed Company.

My answer was very frankly given that I did not deem it a question for my official intervention; that it was a judicial question; that the rival party had as much right as Mr. Hargous to demand my services in their behalf; and that certainly they would have just and grave cause of complaint if I, equally the representative of both, should take sides against them. I added that in fortunate concurrence with my own views of propriety were the instructions of my government on the point, which I read to him.

It is for the department to determine whether I am to act under a different view of duty. So far I have seen no cause to believe that it is an erroneous one, and I hope the department will not alter its instructions until I have been here long enough to ascertain the feelings of the Mexican government on the subject.

I am, very respectfully, your obedient servant,

JOHN FORSYTH.

Hon. W. L. MARCY,
&c., &c., &c.

Mr. Bellangé to Mr. Forsyth.

MEXICO, *November 12, 1856.*

SIR: On the 29th of last month I had the honor to address you a note, asking the protection of the government of the United States in favor of Mr. P. A. Hargous, an American citizen, and remitted to you all the documents relative to the business for which I claimed said protection.

In an interview which I had with you subsequently, my note was verbally answered by your stating that, according to the instructions of your government relative to the Tehuantepec question, it was not in your power to grant the protection asked for, and that, unless new instructions should be received, you could not protect the interests of Mr. P. A. Hargous in an efficacious way.

The documents which I have had the honor to submit to your perusal will have informed you of the real state of the case, and will have enabled you to form an opinion respecting the side where mere honesty and equity ought to call the protection of the government of the United States. It would, therefore, be useless to relate again all the antecedents and observations which have made the subject of the note which I addressed to General James Gadsden, then minister plenipotentiary of the United States, on the 31st of March last, and which has met with so little attention on his part, at a time when a few officious words from him might have finally settled the question to the entire satisfaction of the American and Mexican governments, and of

all parties *seriously* interested in the matter; however, I consider it to be my duty, in the defence of the interest which has been trusted to me, to lay before you such arguments as may favor Mr. P. A. Hargous, and may incline the government of the United States to alter their views upon the Tehuantepec question.

The facts which are established, beyond any doubt, by the numerous documents which I have submitted to you, are the following:

1. That an imaginary company, composed of American and Mexican citizens, without a cent of capital, obtained from the Mexican government a privilege to open a way of communication through the Isthmus of Tehuantepec.

2. That to obtain said privilege they agreed to pay into the Mexican treasury \$600,000.

3. That having no money they borrowed it from Mr. F. de P. Falconnet, a British subject, to whom the privilege was pledged, with the authorization of the Mexican government, under the conditions that he might dispose of it in any way he chose, without the intervention of any judicial authority, in case the bills, which were given him on the United States, in payment of the \$600,000 delivered by him into the Mexican treasury, should not be paid.

4. That the bills were not paid, and that in consequence, at the request of Mr. F. de P. Falconnet, said gentleman was declared by the Mexican government to be the rightful owner of the privilege.

5. That Mr. F. de P. Falconnet, with a view to recover his money, made a cession of his privilege to Mr. P. A. Hargous, that said cession has not yet been approved by the Mexican government, who has sent the matter before a commission, which has not yet given any decision.

6. That the company which originally obtained the privilege has lost all right to said privilege, because they have not repaid the \$600,000, because they have not complied with the 5th article of the secret conditions, which imposed upon them the obligation to indemnify the owner of the Garay grant, and because said privilege has legally passed into the hands of Mr. F. de P. Falconnet.

7. That, therefore, the pretended company organized at New Orleans, under the name of the Tehuantepec company, has no right whatsoever to the privilege granted by the Mexican government, and that the people now employed by said company on the Isthmus may be, in perfect justice, turned out by the Mexican authorities whenever they may think proper to do so.

These facts, which are clearly established by the documents which have been put into your hands, show the real state of the case, and will convince you that, if the intrigues which have for the last three years deceived the American and Mexican government in their hopes to see "the communications opened," are allowed to continue by the tacit protection of both governments, it is to be expected that, sooner or later, such a state of things may occasion serious difficulties between both nations. These difficulties may be easily avoided now, if the government of the United States consents to give its protection to Mr. P. A. Hargous, and cause its influence with the Mexican government to obtain the acknowledgment of the cession made by F. de P. Falconnet to P. A. Hargous.

If both governments sincerely wish to come to a final settlement of this question, the principal point is to establish the legal possession of the privilege, in order that men of capital and enterprise may find all the necessary security for the large sums which are required for the execution of so large an undertaking. Until so important a point is decided, no serious capital will be found for the enterprise in view, and business jobbers are not the men to fulfil the conditions stipulated in the grant.

The object mentioned would undoubtedly be obtained if the government of the United States would insist on the acknowledgment, by the Mexican government, of the cession made by F. de P. Falconnet to P. A. Hargous. The question might thus be finally settled and procure the following results:

1. The question would be adjusted according to the invariable principles of justice and equity, and thus in an honorable way for both governments.

2. Mr. F. de P. Falconnet would be put out of the question by furnishing him with the means to recover his \$600,000, with the interest and damages.

3. The execution of the enterprise of opening the way of communication would be realized by giving entire security to the American capital employed in the business.

4. The claim of Mr. J. de Garay would be adjusted by due compliance with the secret articles of the grant.

5. A complete satisfaction would be given to the government of the United States, who desire to see a shorter way of communication with California opened through more healthy climates.

These are the positive advantages which may be obtained by a change in the policy of the government of the United States respecting a question which has remained pending ever since 1848; and I hope that you will lay the present note, in favor of the interest which I represent, before your government, and support the solution therein recommended as the most favorable to a final adjustment, in view of the interests of both governments.

I have the honor to be, sir, your obedient servant,

ALEX. BELLANGÉ.

JOHN FORSYTH, Esq.,

Minister Plenipotentiary and

Envoy Extraordinary of the United States.

Mr. Cass to Mr. Forsyth.

No. 27.]

DEPARTMENT OF STATE,
Washington, July 17, 1857.

SIR: The value and importance to Mexico of a railroad across the Isthmus of Tehuantepec can scarcely be over estimated. In this the United States are also deeply interested. The proximity of the Isthmus to our shores, the salubrity of the climate, the adaptedness of the ground for the construction of a railroad, and the great dim-

inution of distance in comparison with other more southern routes between our Atlantic and Pacific possessions, all conspire to point it out as far preferable to any other route outside of our own territory.

Under our treaty with the republic of Mexico, of December 30, 1853, the United States have acquired a right of transit across the Isthmus which they will never, under any circumstances, abandon. This may be sufficient for all practical purposes, yet it is desirable that the provisions of that treaty should be confirmed, extended, and rendered more specific. It is, therefore, now proposed to enter into a new treaty for this purpose.

But of what value will this right be to either the one or the other republic, unless effectual measures should be adopted for the construction of a railroad between the two oceans. Already much precious time has been lost by the conflicting grants made for this purpose by Mexico. But for these, this great work would have been in successful operation ere the present day. The period has now arrived when there should be no longer any delay in commencing, prosecuting, and completing an undertaking in which not merely Mexico but all commercial nations are so deeply interested. These conflicting grants are two in number, and have usually been denominated the Garay grant and the Sloo grant. On each of these I shall make a few observations.

On the 1st of March, 1842, the Mexican government granted to Don José de Garay the privilege of opening a line of communication, "by water, except where it is impracticable, when railroads and steam carriages shall be used, between the Pacific and Atlantic oceans, through the Isthmus of Tehuantepec." And this passage, when opened, is, in an enlightened spirit, declared to be "neutral and common to all nations at peace with the Mexican republic." In order to enable Mr. Garay to accomplish the undertaking, there was granted to him in fee simple "all the unoccupied lands (belonging to the government) for a distance of ten leagues on either side of the line of communication;" and it was further stipulated that "all foreigners are permitted to acquire real property, and to exercise any trade or calling, not even excepting that of mining, within the distance of fifty leagues on either side of the line of transit."

In consideration of these concessions Garay was "to give to the government, from the time that the line of communication shall be opened for the transport of effects, a fourth part of the net profits of the receipts for this purpose, deducting the expenses of administration, preservation and repair thereof."

No taxes or imposts were to be laid upon articles passing in transit between ocean and ocean.

This was a liberal concession to Garay, and had it not been annulled by the Mexican congress, there can be no doubt that ere this a communication would have existed by steamboat and railroad across the Isthmus.

The limitation of time contained in this concession for the commencement of the work was extended from 1st July, 1844, until the 1st July, 1845, when it expired, and under the express terms of the concession, "in case this should not be performed (the commencement

of the work) within the time specified, the exclusive privilege hereby conceded to him (Garay) shall cease."

More than sixteen months after this limitation had expired, that is to say, on the 5th November, 1846, General Don José Mariano de Salas, at the time exercising supreme executive power, having previously attacked and subverted the government of Paredes by military force, issued a decree extending to Garay the term for the commencement of the work, "for two years more, to be reckoned from the date of the publication of this decree." Of course, the period of this extension expired on the 5th November, 1848, though the holders of the Garay concession allege that they had commenced the work before this date, and consequently saved the forfeiture of the grant. However this may be, the Mexican congress passed a decree on the 23d May, 1851, declaring that "the decree of the 5th November, 1846, is declared null and insubsistent, as the powers with which the provisional government of that period were invested were insufficient to dictate it."

It is not my purpose to discuss the question whether the Mexican congress had the right to annul this decree of Salas, or whether the assignees of the Garay grant had used due diligence in commencing the work. The former question you will find fully discussed among the archives of your legation.

It is certain that this decree of the Mexican congress was passed after a treaty upon the basis of the Garay grant, signed by the plenipotentiaries of the two governments, had been submitted to the Senate of the United States, and had been unanimously approved and ratified by that body, with some amendments, and returned to Mexico. This treaty was, notwithstanding, rejected by Mexico, and the Garay grant was annulled. This brings us to take some notice of the Sloo grant.

The congress of Mexico, on the 14th May, 1852, passed a law inviting proposals for opening the interoceanic communication across the Isthmus of Tehuantepec.

In pursuance thereof, on the 5th February, 1853, Cevallos, president *ad interim*, in conformity with the law of the 14th May, 1852, and the decree calling for proposals, published in consequence thereof on the 29th July, 1852, accepted the proposals which had been "submitted by the Mixed National and Foreign Company, under the name of A. G. Sloo," "for the opening of interoceanic communication through the Isthmus of Tehuantepec." On the same day (5th February, 1853) a contract was entered into and signed between the parties, a copy of which is herewith transmitted.

By the 14th clause of this contract it was stipulated that A. G. Sloo & Co., as a guaranty on their part for its fulfillment, should deposit in the Mexican treasury the sum of \$600,000, of which \$300,000 were to be deposited immediately, and the remainder in monthly instalments of \$50,000 each. Sloo & Co. being unable to comply with this stipulation, on the 7th and 10th February, 1853, an agreement was entered into, with the license and full approbation of the Mexican government, under which Francisco de Palezieux Falconnet, a British subject, resident in Mexico, was to advance the above

sum of \$600,000 to the Mexican treasury, and accept bills of exchange, payable to his order for the same, drawn by William D. Lee on the house of A. G. Sloo, of New Orleans. In case of failure of payment, for whatever causes, the grant or concession from the Mexican government was pledged and mortgaged for this sum to Mr. Falconnet, with power for him to proceed in a summary and extrajudicial manner and sell the concession "to the highest bidder who may offer, without any judicial formality, or to adjudicate it to himself, if he chooses, without these appearers or their representatives having any right of opposition or making any reclamation, since now, in anticipation of the case, they confer upon him the most full, irrevocable, and efficacious power that can be required in law, with all the amplitude that may be legally sufficient," &c., &c.

The bills were protested, and have never been paid. Mr. Falconnet, on the 2d June, 1853, addressed the Mexican government requesting them to acknowledge him as the rightful owner of the concession, but received no answer. It is stated in a note of Mr. Lettsom, chargé d'affaires of her Britannic Majesty, to Don Luis de la Rosa, Mexican minister for foreign affairs, under date of 22d April, 1856, "6th. That Mr. Falconnet, with a view of recovering his money, subsequently made a legal cession of his privilege to Mr. Hargous, of New York; that Mr. Falconnet, through his agents, on the 8th August, 1855, informed the Mexican government of the cession being thus made; but that to this communication the Mexican government returned no answer; and that on the 5th November, 1855, Mr. Falconnet's agents again addressed the Mexican government, requesting answers to their letters of 2d June, 1853, and of the 25th February, 8th August, and 5th November, 1855."

"7th. That no answers were given to any of these communications until the 26th November, 1855, when Mr. Falconnet was informed by the minister of public works that that gentleman had been acknowledged by the Mexican government as the owner of the privilege; but that the cession of it by him to Mr. Hargous was not recognized." This information was given in a letter of this date from the minister to Messrs. Letcher, Torre & Co., the agents of Mr. Falconnet, in answer to the letters above mentioned, recognizing Mr. Falconnet to be "the possessor of the grant in question, according to the above mentioned contract of the 10th February, but not as regards the transfer which he has made of his right to Mr. Peter Amedee Hargous, as stated by you in your last mentioned communication." In the note of 22d April, 1856, above referred to, Mr. Lettsom insists, on behalf of Mr. Falconnet, as a British subject, that the concession made by him to Mr. Hargous should be recognized as the means of recovering his \$600,000, and "that the time granted by the second article of the privilege should be reckoned naturally, only from the day (26 November, 1855) on which Mr. Falconnet's numerous applications to the Mexican government were answered," (26 November, 1855.) This sum has never been refunded to Falconnet, although without his money the contract could not have been obtained. It does not even appear that any attempt has been made to refund it to this innocent party, who had no interest in the transaction. So far from this, it may

be fairly inferred from the 9th article of the charter of incorporation under the law of Louisiana of the Tehuantepec Company, "founded on the Sloo grant," that no intention exists of refunding this money, until the amount shall be received by the company from the profits of the road. Mr. Falconnet, therefore, with strong apparent reason, now claims to be the owner of the Sloo concession, under the recognition of the Mexican government, which, however, has withheld from him the right of transferring it to Mr. Hargous.

In any event it would appear that whether the transaction be a mortgage or an absolute title, neither Mr. Sloo nor the Tehuantepec Company can, until they shall first refund the amount paid to Mr. Falconnet to the Mexican government, with interest and damages, deprive Mr. Falconnet of his interest in the concession.

On the 21st June, 1853, and notwithstanding the default in the payment of the bills drawn on A. G. Sloo, he and his partners incorporated themselves by the name of "the Tehuantepec Company," under a law of the State of Louisiana, passed in 1852.

The second clause of the contract with the Mexican government of the 5th February, 1853, required the contractors "to commence a plank road at the point at which the river Coatzacoalcas ceases to be navigable, in the year that this contract has been made and to finish it in three years after having commenced it. To begin the construction of a railroad in one year, counting from this last date, and to finish said railroad, with all the necessary cars and engines, within the four following years, notifying the supreme government in both cases of having commenced the works, and of their being finished."

By the 14th article it is provided, that "the contractor shall incur the penalty of losing the expenditure already made, the materials and tools collected together in the territory of the republic, *and the rights conceded to him by the contract, if he does not commence and finish the wheel road, and if he does not commence the railroad within the stipulated time.*"

The Mexican government acted wisely in requiring the construction of a plank road in anticipation of the completion of the railroad. This could have been speedily constructed through the Isthmus from the nature of the ground and the quantity of timber which it supplies, and the commercial world, as well as the republic of Mexico, would have derived great benefits from this road. They could then have waited for the construction of a perfect and permanent railroad.

The Tehuantepec Company have violated their engagement, and forfeited the contract under which they act, by not having, even until this day, commenced the construction of the plank road. They have never laid a plank upon the route, and probably never intended to do this. In their charter, under the Louisiana law, (2d article,) they say nothing about the plank road, and simply declare that the "corporation is established for the purpose of constructing a carriage road," &c.

It is, however, alleged by the company that they have constructed a carriage (not a plank) road across the Isthmus, and "the through transit was effected on the 4th February, (last,) being one day within the limit prescribed by the original grant." Even if this were suffi-

cient, which it clearly is not, according to the address of the president and directors of the Tehuantepec Company, dated at New Orleans on the 9th May last, it is not expected by them that the carriage road can be made available for traffic and travel before the 1st October next.

But it is alleged that the Mexican government have accepted what the company have done as a fulfillment of the original contract, and have waived the construction of the plank road. I have seen no sufficient evidence of this fact; but even if it were well founded, this could not have been done without the consent of the government of the United States. Under the 8th article of the treaty with Mexico of the 30th December, 1853, the United States have acquired a common interest with Mexico in "the early construction of a plank and railroad across the Isthmus of Tehuantepec," and without our consent the forfeiture of the contract could not legitimately have been waived.

The United States have a deep interest in the early construction of this railroad, and it matters comparatively but little to them by whom this object shall be accomplished. If the existing company were able and willing to perform the task we should cheerfully waive all past derelictions of duty on their part, and encourage them to proceed. I regret to say, however, that it would seem almost impossible that the railroad can be constructed by them.

Under the charter the capital stock is fixed at \$10,000,000, and is divided into 100,000 shares, of \$100 each; 50,000 shares, or one-half of this capital stock, says the charter, "shall be held and retained by A. G. Sloo and assignees, and be considered fully paid, as a compensation for the contract." Thus one-half the entire capital is given to Mr. Sloo as a bonus for obtaining the contract, and is entirely sunk as a fund for the construction of the road. In regard to the remaining 50,000 shares, without descending to particulars, it is quite evident, from a view of the charter, that but a small portion of these can be rendered available for this purpose. In fact, it is not known or believed that a single instalment was ever called in or paid upon the stock subscribed. On the contrary, there is good reason to believe that Messrs. Sloo & Company intended to construct the entire road, not by means derived from the stock, but by loans from Europe, secured on the railroad. Even if this had been possible at the date of the charter, it has now become impossible by the high rate of interest in London and Paris.

Thus you will perceive that the complications are endless, and the right of none of the contending parties is clear; and thus the construction of this great international highway has been hitherto prevented. It is but just to observe, however, that on the face of the papers the claim of Mr. Falconnet seems to be the best founded.

But the prospect for the construction of the road has now become brighter; because Mr. Falconnet, the Tehuantepec Company, and the owners of the Garay grant have united their interests, and now seek to obtain from the Mexican government such modifications in the Sloo grant as will secure the construction of the road. If these modifi-

cations can be obtained, it is confidently believed that sufficient capital, energy, and enterprise will be enlisted to accomplish the object.

The Hon. J. P. Benjamin, senator in Congress, from Louisiana, and Emile La Serè, esq., of New Orleans, president of the Tehuantepec Company, will proceed to Mexico for this purpose, and the latter will bear you these instructions. They will carry with them and deliver to you copies of the agreement between the respective parties above mentioned, the deed of trust, in pursuance thereof, and a new charter of incorporation under the law of Louisiana.

The capital of the new company is to be \$10,000,000, divided into shares of \$100 each. Eight millions of this stock is to be held open for subscription. The remaining two millions, in full paid certificates of stock, together with one million of 8 per cent. bonds, are to be delivered to the parties entitled as a full consideration for the transfer to the new company of the Garay grant and of all the rights of the present Tehuantepec Company. All their assets, property, the work done, in short everything belonging to them, or either of them, on the Isthmus, or elsewhere, are to be surrendered to the new company, so that it shall come into existence released and discharged from all liabilities whatever, except the claim of Mr. Sloo himself, who, it is understood, is now engaged in a lawsuit with the existing company, and who denies that the president and directors of this company fairly represent the Sloo grant.

No profits are to be divided arising from the transportation of passengers, merchandise, and other articles across the Isthmus until after the completion of the railroad; but these are to be faithfully applied towards its construction.

The company are not to divide, at any period of its existence, more than at the rate of fifteen per cent. per annum upon its capital stock; and whenever the profits exceed this rate the tolls are to be reduced to that standard. The new company are, of course, to be liable for the contracts already entered into by the old company for mail coaches, baggage wagons, and for making the bridges, completing the wagon road, building piers, and furnishing steamboats for the navigation of the Coatzacoalcos river. It is also to satisfy Mr. Falconnet for \$600,000 advanced by him to the Mexican government, but it will indemnify itself out of the interest of that government in the net profits of the company, as provided for in the Sloo grant.

I have thus stated the general outlines of the new agreement, because it has not, in its final form, been yet reduced to writing. This arrangement furnishes strong reasons to believe that under it the road will be constructed. The chief drawback is the controversy between Mr. Sloo and the present company, who, however, have possession of the Isthmus, and have been prosecuting the work at considerable expense. It is to be hoped that this controversy will be amicably adjusted between the parties. You are hereby instructed, upon the request of Messrs. Benjamin and La Serè, to make known to the Mexican government the object of their mission, and to give them such aid in its accomplishment as you may deem advisable and effectual.

They may render themselves useful to you in obtaining the cessions of territory from Mexico embraced by your instructions, and, if deemed

expedient, you may employ their services for this purpose. They are both gentlemen of high character and patriotic feelings, and will, I have no doubt, do all that they can, in compliance with your wishes, to render your negotiations successful. But you are to be exclusively the judge in the matter.

Without intending to decide positively what are the rights of Mr. Falconnet, which have been recognized by the Mexican government, as heretofore stated, you are instructed to insist that that government shall extend a similar recognition to any American citizen or company who has purchased or may purchase the same from or under Mr. Falconnet. We cannot agree that any distinction shall be made in favor of British subjects over American citizens.

But whatever may be the rights of the parties to conflicting Mexican grants, the interests of the government and people of the United States demand that their permanent right of way across the Isthmus shall be placed upon sure treaty foundations. For this purpose I transmit articles to be submitted to the Mexican government. The first of these articles, after confirming the stipulations in favor of the United States, in the 8th article of the treaty of December, 1853, and rendering them applicable to any company or individuals by whom the road may be constructed, contains an express cession of the right of transit across the Isthmus to the United States and their citizens, in the most general and comprehensive terms, reserving however to the Mexican republic its right of sovereignty. This article, with a single exception, does no more than substantially carry into effect the provision of the treaty of December, 1853, securing "the stable benefits of the said transit way to the persons and merchandise of the citizens of Mexico and the United States," and prohibiting either government from interposing "any obstacle to the transit of persons and merchandise of both nations."

The exception referred to is embraced in the stipulation that this right of transit shall "be used and enjoyed in the same manner and upon equal terms by both republics;" whereas the 8th article of the treaty of December, 1853, provides only that "at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations."

It is certainly reasonable and equitable that the United States, even upon the principle of mutual equivalents, should be placed upon an equality with Mexico in the use and enjoyment of the transit. By the next succeeding article, they agree to extend their protection to all routes of communication across the Isthmus, and to guaranty the neutrality of these routes, as well as bind themselves to exert their influence with other nations to obtain from them a similar guaranty of neutrality.

These are obligations of an important and responsible character, without which it might be difficult to obtain the capital necessary for the construction of the road; and in consideration of these we may justly claim to be placed upon the same footing with Mexico. But we do not desire this for ourselves alone, as you will perceive by the next succeeding article, but for all other nations. This provides for

a perfect equality of the citizens and subjects of all nations with the citizens of Mexico, in regard to charges and tolls on the railroad or any other means of communication across the Isthmus.

The contemplated railroad will be a thoroughfare for all the commercial nations of the world, and the period has passed when restrictions of any kind upon such a thoroughfare can be patiently tolerated for the benefit of one nation to the prejudice of the rest. The practice of modern commercial nations, based upon the soundest policy, repudiates the idea that discriminations shall be made in favor of any particular nation on the great avenues of international commerce. Besides, this liberality is the true policy of Mexico. It will enable the railroad within her territory to compete successfully with the Panama railroad and other rival routes across the Isthmus. And, after all, from her geographical position, she will derive great and peculiar advantages from the railroad of which she cannot be deprived. Nature has secured these to her, and with these she ought to be satisfied.

These views you are instructed to urge strongly upon the Mexican government, and it is confidently hoped you will do this with success. Should you fail in your efforts in favor of other nations, it is believed you can obtain an equality for the United States with Mexico in this particular. We shall most reluctantly yield this point. If we can succeed, the equality of all nations on the route will soon follow.

Second article. I have already anticipated in the preceding observations much of what I had to say in relation to this article. It provides that the Mexican government shall establish two free ports, one at either end of the Isthmus, where no tonnage or other duties shall be levied on merchandise belonging to citizens or subjects of any nation passing merely in transit from ocean to ocean, and not intended for consumption in Mexico. The reasons will at once occur to your mind against both the injustice and impolicy of any attempt on the part of Mexico to raise a revenue by tonnage or other duties upon articles merely passing in transitu over the road. To prevent all future disputes, however, this ought to be expressly stipulated by treaty. In regard to the two free ports, although deemed important, these may be dispensed with, if Mexico shall persistently refuse to establish them.

Whilst it is believed that, under the treaty of December, 1853, the Postmaster General already possesses the right to enter into a contract to carry the mail of the United States in closed bags across the Isthmus, yet, to prevent all disputes, it is deemed advisable to insert such a clause as that proposed in the treaty.

The third article does no more than carry into effect and extend to all the routes of communication which may now or hereafter exist across the Isthmus the following provision in the eighth article of the treaty of December, 1853: "The Mexican government having agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection, as it shall judge wise, to it, when it may feel sanctioned and warranted by the public or international laws." For this reason it is not presumed that objection will be made to this article. If the jealousy of

the Mexican government, however, should interpose an insurmountable obstacle, the concluding portion of the article might be made to read: "but upon failure to do this, for any cause whatever, the government of the United States may" extend its protection to all or any such routes, according to the provisions of the eighth article of the treaty of the 30th December, between the United States and Mexico.

The fourth article. This is confined merely to the troops, military stores, and munitions of war, belonging to the two governments. It will have no injurious effect upon the general commerce of the citizens or subjects of any nation. Mexico and the United States are the two nations on whom and on whose citizens the burden of the construction, preservation, and protection of the road will chiefly rest, and who are the most interested in its success. It cannot, therefore, be deemed unreasonable that their troops, military stores, and munitions of war should be transported over it free of toll; this right, in regard to the United States, being confined to such troops, military stores, and munitions of war as may pass in transit between their Atlantic possessions. Should it be found impracticable to induce the Mexican government to assent to the portion of this article in favor of the United States, it might be so modified as to prescribe that the troops of the United States only shall pass free of toll, their military stores and munitions of war paying no more than one-half of the usual rates.

Article fifth. It is almost certain that the railroad across the Isthmus, if properly conducted, will eventually become a source of immense profit to the stockholders. This article is therefore intended to prevent this profit from becoming too extravagant, and thus to protect the citizens and subjects of all nations against the imposition.

I desire you to understand distinctly that the exercise of any influence on your part in favor of the changes in the Sloo grant sought to be obtained from the Mexican government by Messrs. Benjamin and La Sere will be on condition that the new grant shall conform to the stipulations in the foregoing articles.

Thus the President, confiding in your patriotism and abilities, has entrusted to you a most important negotiation. Should you succeed, this will be productive of great and enduring benefits to your country, and entitle your name to be enrolled in the list of her most distinguished diplomatists.

I am, sir, your obedient servant,

LEWIS CASS.

JOHN FORSYTH, Esq., &c., &c., &c.

ARTICLE 1. In addition to the stipulations contained in the 8th article of the treaty between the United States and the Mexican republic, dated the 30th of December, 1853, all of which are hereby confirmed, no matter by what company or individuals the plank and rail road, or either of them therein mentioned, may be constructed, the Mexican republic hereby cedes to the United States in perpetuity, and to their citizens and property, the right of way or transit across the Isthmus of Tehuantepec, from ocean to ocean, over any railroad or other route of communication, natural or artificial, whether by land or by water, which

may now or hereafter exist, or be constructed, to be used and enjoyed in the same manner and upon equal terms by both republics and their respective citizens; the Mexican republic, however, reserving its right of sovereignty over the same.

ARTICLE 2. The United States hereby agree to extend their protection to any such railroad, and to all other routes of communication across the Isthmus aforesaid, and to guarantee the neutrality of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality. And the Mexican republic, on its part, hereby undertakes, within ——— from the exchange of the ratifications of this treaty, to establish two free ports—one on the Gulf of Mexico, on the eastern, and the other on the Pacific, on the western side of the Isthmus of Tehuantepec—where no tonnage or other duties shall be imposed or levied by the Mexican government on any effects or merchandise belonging to citizens or subjects of the United States, or of any other country, intended *bona fide* for transit across the Isthmus, and not for consumption within the territories of Mexico. And no higher or other charges or tolls shall be imposed on the conveyance or transit of persons and property of citizens or subjects of the United States, or of any other country, on or over any railroad or other route of communication across the Isthmus, than are imposed on the persons and property of Mexican citizens. And the Mexican republic recognizes the right of the Postmaster General of the United States to enter into contracts with individuals or companies to transport the mails of the United States across the Isthmus, in closed bags, not intended for distribution along the line of communication, free from the imposition of all taxes or duties by the Mexican government.

ARTICLE 3. The Mexican republic agrees that, should it become necessary at any time to employ military force for the security and protection of persons and property passing over these routes, or any of them, it will employ the requisite force for that purpose; but upon failure to do this for any cause whatever, the government of the United States may, in its own discretion, employ such force for this and for no other purpose, and when the necessity ceases, such force shall be immediately withdrawn.

ARTICLE 4. The Mexican republic and the United States mutually agree that no charges or tolls whatever shall be imposed upon any railroad, or other route of communication, for the conveyance over it of Mexican troops, military stores and munitions of war; nor of troops, military stores and munitions of war of the United States, passing in transit, backwards and forwards, between their Atlantic possessions.

ARTICLE 5. No company now in existence, or which may hereafter be established, for the construction of a railroad, or any other route of communication across the Isthmus of Tehuantepec, shall ever divide more than at the rate of fifteen per cent. per annum to its stockholders from tolls collected upon the same; and whenever the rate of tolls shall be found to exceed this amount, they shall be reduced to the standard of fifteen per cent. per annum.

Mr. Forsyth to Mr. Cass.

[Extracts.]

No. 48.]

LEGATION OF THE UNITED STATES,

City of Mexico, September 15, 1857.

SIR: Department despatches, Nos. 27 and 28 of the series, have been placed in my hands by the Hon. Emile Lasère, to whom they were entrusted.

* * * * *

In respect to the privileges required by my instructions on the Isthmus of Tehuantepec, there would not have been much difficulty, had I been authorized to purchase them. * * I had, before receiving these instructions, sounded the government on the Isthmus question, and had ascertained that I could, for a consideration, obtain concessions even more ample than those contemplated in my instructions—concessions that would have given the virtual protectorate and military occupation of that transit to the United States.

Messrs. Benjamin and Lasère will, of course, report to the department the result of their private mission on behalf of the Garay, Hargous, and Louisiana Tehuantepec Company interests. In obedience to your directions, I introduced these gentlemen to the president, and informed him that I was instructed to say that their scheme had the approval of my government, and that I was ordered to support it. Of the course and private history of their negotiations I am unable to speak, for I know nothing. * * * *

The department will perceive, from the copy of the contract, herewith enclosed, which Messrs. Benjamin and Lasère have concluded in the form of a grant to the Louisiana company, that it is neither in the shape nor in conformity with the terms and conditions set forth in your instructions to me. * * * I did the only thing I could to compel conformity to the instructions and to protect the interests of the government of the United States; and this was, in the midst of the mysterious negotiation, to call upon the president, and bring pointedly to his attention the following extract from your instructions, marking the condition upon which I was ordered to support the views of Messrs. Benjamin and Lasère. The following is the extract: "I desire you to understand distinctly that the exercise of any influence on your part in favor of the changes in the Sloo grant sought to be obtained from the Mexican government by Messrs. Benjamin and Lasère will be on condition that the new grant shall conform to the stipulations in the foregoing articles." I read to the president the articles referred to, and told him that * * * I felt it my duty to say that my influence, as the representative of the United States, in favor of the arrangement to be made, was to be considered as given or withheld according as the arrangement was or was not in conformity with these articles. The president replied that the matter contained in these articles was of very grave and delicate import, requiring the serious consideration of the Mexican government; that he could not, in such an informal interview, presume to give an opinion upon

the subject, and advised that the matter should be brought formally before the government through the minister of relations. In respect to Messrs. Benjamin and Lasère, he remarked, that they had been introduced to him by me as the minister of the United States, and recommended to his favorable consideration, as I had been instructed to say, by the President of the United States; that he was treating with them as private persons, and making a contract for the best advantage of Mexico, and he could not perceive what either the government of the United States, or the minister of the United States, had to do with a question which was altogether and exclusively a Mexican one. * * * *

I regret that the public negotiation confided to me has not had so happy an issue as the private one of Messrs. Benjamin and Lasère. While these gentlemen carry home with them a privilege, be it worth more or less, the government of the United States gets nothing, and, I fear, loses something. It is certain that it has lost the valuable time intervening between the receipt of my instructions and the 16th instant, when Gen. Commonfort's full powers cease. * * *

The note of Mr. Lerdo, of the 12th instant, in reply to mine of the 5th, taken in connexion with the restrictions of the 21st article of the late grant to the Louisiana company, appeared to me to have a significance that I could not let pass. I accordingly addressed a note to Mr. Lerdo, dated 15th instant, a copy of which is enclosed, protesting, in the name of my government, against any act or interpretation of any act by the government of Mexico which would in the smallest degree diminish the security and effect of the guaranties contained in the 8th article of the Gadsden treaty, warning Mexico that under no circumstances would the United States yield a jot of the rights acquired by that treaty. * * * *

I am, very respectfully, your obedient servant,

JOHN FORSYTH.

Hon. LEWIS CASS, &c., &c.

[Extracts.]

LEGATION OF THE UNITED STATES,
Mexico, September 5, 1857.

* * * *
Second. The second object embraced in the proposed negotiation relates to the Isthmus of Tehuantepec. And as these objects cannot be more succinctly stated than they are in the draught of articles for the proposed treaty, the undersigned transmits to his excellency a copy of these.

For the purpose of avoiding misunderstanding and unnecessary subsequent explanations, the undersigned has the honor to state that the concessions asked for in reference to Tehuantepec * * * are unaccompanied by the offer of any pecuniary compensation.

If the government of Mexico should be inclined to entertain a treaty negotiation, and for the objects briefly designated in this note, the

undersigned is ready, at the pleasure of his excellency, to enter upon a conference to that end.

The undersigned takes this occasion to assure his excellency of his very high consideration.

JOHN FORSYTH.

His Excellency Señor Don SEBASTIAN LERDO DE TEJADA,
Minister of Relations.

[Extracts of Translation.]

NATIONAL PALACE,
Mexico, September 12, 1857.

The undersigned, minister of foreign relations of the republic, has the honor to reply to the note which his excellency John Forsyth, envoy extraordinary and minister plenipotentiary of the United States, addressed to him on the 5th instant.

In it his excellency has been pleased to state that, in compliance with the instructions of his government, he transmits * * * *
* * * stipulations relative to interoceanic communication across the Isthmus of Tehuantepec. His excellency adds, that he is ready to confer, if the government of Mexico is disposed to open negotiations for such purpose.

The undersigned felt it his duty to communicate the contents of the note * * * * to his excellency the president of the republic, receiving his sanction to the following reply.

Respecting the * * draught, various concessions are likewise therein proposed: as that of the perpetual right of way, the right to pass an armed force, and the full power of granting [otorgar] protection on the Isthmus, which stipulations Mexico could not admit, inasmuch as they depreciate her rights of sovereignty over that territory.

Nevertheless, retaining its full and unqualified rights, the government of the republic is disposed to endeavor, in the most fitting manner, to encourage and secure the benefits of interoceanic communication, not only in favor of the interests and commerce of Mexico, but also in favor of the commerce of the United States and other nations.

For these reasons, the negotiations might be fruitless, if his excellency Mr. Forsyth, following his instructions, cannot consent to abandon the points indicated; but if he feels at liberty to modify the proposals substantially, or to draw up new ones which shall not be repugnant to the spirit of this note, there will then be no obstacle to overtures with the Mexican government, animated as it is by the amicable sentiments consonant with the happy relations subsisting between the two republics.

The undersigned has the honor of reiterating to his excellency Mr. Forsyth the assurances of his very distinguished consideration.

S. LERDO DE TEJADA.

His Excellency JOHN FORSYTH,
Envoy Extraordinary, and
Minister Plenipotentiary of the United States.

[Extracts.]

LEGATION OF THE UNITED STATES,
Mexico, September 15, 1857.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor to acknowledge the receipt of the note of his excellency the minister of relations of the 12th instant, in which he is informed that the government of Mexico declines entering into negotiations for a treaty on the basis of * * * certain concessions to the United States on the Isthmus of Tehuantepec. The time having passed when the undersigned would have felt authorized to depart from the letter of his instructions in the formation of a treaty, he has now nothing to do but to report to his government the answer of the Mexican government to its proposals, and to await its further instructions.

The undersigned cannot permit this occasion to pass without adverting to a passage in his excellency's note, which, taken in connexion with the spirit of a late contract, made by the Mexican government with the Louisiana Company, for the opening of the Tehuantepec Isthmus route, appears to have an important significancy. His excellency states, among other things, that "the right to pass an armed force" over the Isthmus, if granted by Mexico, would "depreciate her rights of sovereignty over that territory;" while, in the grant to the Louisiana company, dated the 7th instant, a restriction is placed upon the company in article 20, which absolutely forbids it to transport armed forces, foreign or national, over any road or transit it may control. The undersigned has to observe that, if the granting of a permission by Mexico to the United States for the transit of her troops and munitions across the Isthmus be equivalent to a depreciation of Mexican rights of sovereignty over that territory, then Mexico has already, *quo ad hoc*, parted with that sovereignty. In the 8th article of the treaty of 30th December, 1853, it is provided, among other things, that "the two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent." It is true, the "arrangements" here spoken of have never been made, but it is only because, up to this moment, the way across the Isthmus has not been opened, and there has been no occasion for the United States to ask for the fulfilment of this stipulation. When that occasion does present itself the United States government will insist, and will have a right to insist, upon the arrangements necessary and proper to perfect the right, conferred by Mexico in this article, to pass her troops promptly across the Isthmus. The undersigned would fail to act in the spirit of his instructions from his government did he not protest, as he now does, against any act or declaration, or any interpretation of any act or declaration, of the Mexican government, which may be supposed to call in question, or place in jeopardy, the clear guaranties of the 8th article of the treaty of 1853. Peculiarly placed as the territories of the United States are,

on the borders of the two oceans, with Mexican territory intervening, and offering a transit fully eight days shorter for the passage of her citizens, her merchandise, and her troops, than by any other route, it is not to be expected that the United States, in an age when steam and electricity have made the saving of time so important an element of progress, can forego the advantages or yield up the privileges guarantied to her by solemn treaty stipulations. So far from it, the government of the United States feels that it has a right to expect from the comity of a friendly and neighboring republic an extension of the facilities and privileges of transit over this important highway, it being always understood that they are to be enjoyed in perfect consistency with the sovereign rights of Mexico over that territory, and without detriment to the interests, the honor, or the prosperity of the Mexican government or people.

This interesting question is surely destined to be the object of early investigation and negotiation between the two governments; and if the undersigned should chance to be the minister of the United States when that time arises, he does not despair of being able to demonstrate, by fair argument, not only that the government of Mexico can treat with that of the United States in the spirit of the Tehuantepec articles, lately submitted to it, without depreciating her rights of sovereignty, but that such a course is consistent with her clearest duty and highest national interests.

The undersigned takes this occasion to assure his excellency of his distinguished consideration.

JOHN FORSYTH.

His Excellency Señor Don SEBASTIAN LERDO DE TEJADA,
Minister of Relations.

[Translation.]

Department of Interior, [Fomento,] Colonization, Industry, and Commerce of the Mexican Republic.

FIFTH SECTION.

His excellency the president of the republic has transmitted to me the following decree:

Ignacio Comonfort, president of the Mexican republic, to the inhabitants thereof: Know ye, that, using the powers granted to me by the plan of Ayutla, remodelled at Acapulco, I have thought proper to issue the following decree:

SOLE ARTICLE. The privilege granted on the 5th of February, 1853, to Mr. A. G. Sloo and associates, and to the company entitled "Mixed," for the opening of interoceanic communication through the Isthmus of Tehuantepec, is declared null and void; the grantees having violated the obligations imposed by the decree of the above

date. Wherefore, I order it to be printed, published, circulated, and duly carried into effect.

Issued in the palace of Tacubaya, September 3, 1857.

IGNACIO COMONFORT.

To the citizen Manuel Siliceo :

Communicated for your information and proper action.

God and liberty. Mexico, September 3, 1857.

SILICEO.

FIFTH SECTION.

His excellency the president of the republic has transmitted to me the following decree :

The citizen Ignacio Comonfort, president of the Mexican republic, to the inhabitants thereof: Know ye, that, using the power granted to me by the plan proclaimed at Ayutla, and remodelled at Acapulco, I have thought proper to issue the following decree :

ART. 1. A privilege is conceded to the company formed in New Orleans on the 30th of July of the present year, called the "Louisiana Tehuantepec Company," for the opening of an interoceanic communication across the Isthmus of that name, according to the conditions expressed in the present decree.

2. The company shall establish the communication by water in the navigable part of the Coatzacoalcos, and from the point where that river ceases to be navigable shall begin the roads referred to in the two succeeding articles.

3. The company shall construct a railroad, which shall be commenced in eighteen months from the date of this decree, and finish in each year a length of ten leagues (26 miles $73\frac{1}{2}$ yards) until the entire completion of the line.

4. Until the railroad is completed, the company shall keep in good serviceable order a convenient road, with the necessary bridges, for the passage of carriages conveying passengers and merchandise of small weight.

5. As soon as the necessary surveys are made, and the plans drawn by the engineers for the line of the road, they shall be submitted to the minister of fomento (internal improvements) for his approval.

6. The company shall build, at its own cost, within two years from the completion of the railroad, the moles and dykes necessary for the line of communication in the ports of Coatzacoalcos and Ventosa, which are open for foreign commerce. It shall immediately construct such works as are necessary for discharging vessels and protecting merchandise from damage.

7. The government grants to the company the land necessary for the carriage road and railroad, the moles, dykes, warehouses, depots, stations, sheds for stages and other carriages, and hotels for passengers; but if the public land is insufficient for these purposes, the company shall take lands of private proprietors, indemnifying the owners according to law.

8. The company may take gratis from public lands materials necessary for the construction and preservation of the road, and its appurtenances. It may also use materials from private lands, indemnifying the owners according to law.

9. The exclusive privilege of transport by the line of communication is granted to the company, which shall consequently have power to levy tolls, transit dues, storages, and any other dues for freight of merchandise, or conveyance of passengers; but the tariff fixed by it shall not exceed fifty cents per league for each passenger, nor three cents per league for each arroba (twenty-five pounds) of merchandise, nor one per cent. on the value of precious metals and jewels for carriage across the entire length of the road.

10. The government shall exact no impost nor contribution of any kind, whether on the transit of merchandise or passengers, or on the capital invested in the road; but the company shall pay to the government each month twelve cents for each passenger and each package of merchandise carried across the general line.

11. During the time necessary for the construction of the road the company may import into the Isthmus, free of duty, the materials, engines, iron work, carriages, and tools necessary for the construction and preservation of the road and its appurtenances, as well as such objects of first necessity as are not found on the Isthmus, and as may be required for the maintenance and clothing of the laborers and persons employed on the road. After that time the company shall have the right to import free of duty only the engines, cars, and rails necessary for the road. This latter exemption shall last during the whole term of the privilege; and this, as well as the exemption first mentioned, shall be used in accordance with the rules to be issued by the minister of the treasury.

12. The government will protect with its whole power the prosecution, preservation, and security of the work.

13. The right granted to the company for the conveyance of merchandise shall be subject to rules to be issued by the minister of the treasury, having for their object the prevention of abuses, and especially the facilitating of the prompt despatch of the merchandise. This right shall not confer on the company the privilege of opening any stores for sale of merchandise on the Isthmus.

14. The government shall keep open, for foreign commerce, the ports of Coatzacoalcos, on the Gulf of Mexico, and of Ventosa, on the Pacific.

15. The company shall construct first-class light-houses on both termini of the line of communication, and another in the port of Acapulco. The first two to be finished within seven years, and the third within ten years from this date, which shall belong exclusively to the government. It shall also deepen the bar and bed of the Coatzacoalcos river, if practicable, according to plans to be approved by the minister of fomento.

16. The present privilege shall last sixty years from this date, during all which time the government shall receive fifteen per cent. of the net revenues of the whole line whenever dividends are declared to the shareholders. During all this time the exemptions and other

rights conceded to the company by the decree shall be valid and exclusive, and shall not be changed except by mutual consent; and at the end of these sixty years the government shall enter into full and absolute possession of the road, with all its trains, (which shall be at least sufficient for the daily carriage of five hundred passengers and ten thousand arrobas of merchandise,) tools, and appurtenances; it being understood that the whole is to be delivered in a perfectly serviceable state for current use, the rails, cars, machines, and utensils, not to be more than half worn. The ships and steamboats of the company are not included in this obligation.

17. The company assumes the payment to Mr. Francisco P. Falconnet of the six hundred thousand dollars, with interest and damages legally due, lent to the Sloo enterprise, to enable it to comply with the 14th article of the contract of the 5th February, 1853, liberating the government from all future responsibility, and without diminishing its share of net profits fixed in the preceding article.

18. The company shall convey to any point of its whole line, free of charge, the mails which pass on the road, receiving and delivering them with the regular formalities. It shall also convey, for half its tariff of prices, all products and objects belonging to the government. It shall also convey *gratis*, going and returning, the officers, troops, employés, and agents of the general government, and of the States, when travelling on public service. The metals and agricultural and manufactured products of the republic shall be conveyed for twenty-five per cent. less than the tariff of prices under regulations to be issued by the minister of the treasury.

19. The government shall name two of the nine directors of the company, with the same faculties and prerogatives as the other directors, and may establish a commission on the Isthmus to watch the works undertaken in conformity with this privilege.

20. The following restrictions are imposed on the company: 1. It shall construct no fortress on the Isthmus, nor organize an armed force of any kind, nor give passage to any armed force, national or foreign, without the express authorization of the general government. 2. It shall immediately discharge from its service any of its employés engaged in smuggling, or protecting smuggling, or who shall commit any offence, and shall aid the government in prosecuting the delinquents. 3. It shall enforce any measures designated by the general government for the purpose of compelling all passengers to obey the revenue laws of the republic.

21. The company, and all foreigners who may take part in it, whether as shareholders or by any other right which may entitle them to intervene in its operations, share in its profits, or claim any of its concessions, shall have no greater rights than Mexicans, nor any other means of enforcing them than those conceded to the latter by the laws of the republic. All questions of this kind, and those which may arise in relation to the acquisition, preservation, or loss of shares or rights in the said road, shall be decided by competent national tribunals in conformity with law. The employés and servants of the company shall be subject to the same conditions.

22. The restrictions of the preceding article shall not apply to dis-

putes or differences between foreign shareholders not within the republic, for, in this case, such disputes may be examined and decided as if this restriction did not exist. But these decisions of foreign tribunals shall in no manner affect the prescriptions of this decree, nor those of the company to which the privilege is conceded, which is to be reputed Mexican for all the purposes of the concession, nor Mexican interests.

23. The company shall not transfer, alienate, nor hypothecate this privilege without previous consent of the government, nor admit as a partner, in any case, any foreign government or state.

24. The transit by the line of communication shall be free for all the inhabitants of the world; but the freight on merchandise of nations who may not make a neutrality treaty with Mexico shall be increased twenty-five per cent.

25. The company shall open lists in Mexico for a period of four months for subscription to its stock by Mexicans, and a third of the whole of its shares shall be reserved for that purpose. After that period, the company shall be at liberty to place its shares at any point in the United States or Europe.

26. The company shall have the right to convey by its line of communication, in closed bags, which shall not be opened, foreign mails; and these bags shall be sealed by the postmasters or collectors of customs.

27. There is conceded to the company the exclusive privilege of navigating the river Coatzacoalcas, under the Mexican flag, during the whole time of the concession, establishing for the service of the line steamboats or ships, which shall not be bound to be provided with such officers and crews as the laws require for vessels reputed national; but their captains, employes, and servants shall be subject to the provisions of the twenty-first article of this decree.

28. The privilege conceded in the foregoing article shall not prevent the inhabitants, owners of plantations or other property, situated on the banks of the river, importing objects which they may need, or exporting their agricultural or manufactured products in vessels of Mexican build and under the Mexican flag.

29. The vessels of the company used solely for conveying correspondence and merchandise for transit across the whole line shall be free from tonnage duty.

30. The company shall convey in its vessels, free of cost, the mails which may come from any point of the republic, or may be sent from the republic to any point at which its vessels touch, receiving and delivering them in due form; in the same way it shall convey for half its tariff rates all articles the property of the government, and without charge, whether going or returning, the officers, troops, employes, and agents of the general government or of the States when travelling on public service. Metals and the products of the agriculture and manufactures of the republic shall be carried for twenty-five per cent. less than the tariff price.

31. The maximum tariff of prices on the vessels of the company shall be three-fourths of that fixed for the railroad.

32. If the company should require for depot or winter quarters any

other port on the Pacific than Ventosa, it shall give the preference to Acapulco.

33. The company shall appoint an agent in Mexico with the necessary powers and instructions for coming to an understanding with the general government and other authorities of the republic on all matters which refer to the obligations imposed on it by this decree.

34. This privilege shall become null and void if the company shall not comply with any of the obligations, or shall infringe the restrictions imposed in the present decree, as well as for a suspension of its work on the road for the space of four months. In any of these events it shall not only lose the concession, of which the Mexican government may dispose at its pleasure, but all the expenses incurred and work done on the Isthmus, which shall remain for the profit of the nation; and shall also pay a fine of \$50,000, which shall be secured to the satisfaction of the minister of fomento.

35. In case there should be any doubt or difference in the execution or interpretation of this privilege, it shall be decided by arbitrators and amicable compounders, one named by the government and the other by the company, who, before beginning their examination, shall name a third in case of disagreement. Against the decrees of these arbitrators and the umpire there shall be no appeal nor recourse whatever.

Wherefore, I order that this be printed, published, circulated, and duly enforced.

Given in the national palace of Mexico, on the 7th of September, 1857.

I. COMONFORT.

To the citizen Manuel Siliceo:

And I communicate it to you for your information and due results.
God and liberty. Mexico, September 7, 1857.

SILICEO.

Mr. Brown to Mr. Cass.

POST OFFICE DEPARTMENT,
Washington, May 24, 1858.

SIR: In reply to your communication of the 21st instant, enclosing a copy of the resolution of the House of Representatives of the 19th instant, calling for information respecting the transit over the Isthmus of Tehuantepec, I have the honor to enclose a copy of a letter which I have just prepared and will send to the chairman of the Post Office Committee, in reply to a call made by the committee on the same subject, which I hope will be satisfactory.

I have the honor to be, sir, your obedient servant,

AARON V. BROWN.

HON. LEWIS CASS,
Secretary of State.

Mr. Brown to Mr. English.

POST OFFICE DEPARTMENT,
Washington, May 24, 1858.

SIR: In reply to your communication of the 20th instant, I have the honor to state that no contract has been entered into with any party or parties to carry the California mails by the Tehuantepec route. Applications for such a contract having been repeatedly made verbally, and, perhaps, in writing, the department advertised for proposals, which may be seen in the printed pamphlet of Proposals for Louisiana, page 51. Having advertised for proposals on this line, and received one or more bids on it, the department, after taking suitable time for deliberation, has come to the conclusion to establish mail service thereon from New Orleans, *via* Tehuantepec, to Acapulco, provided a satisfactory contract can be made for that purpose. The service is not proposed to be put on further than to Acapulco, because the present line of steamers from Panama to San Francisco always touch at Acapulco, and can take on the New Orleans mails and passengers.* It is not, however, proposed to make the first contract for a longer period than one year from 1st October next, so that this contract and the one from New York to Aspinwall, may expire at the same time. In the course of this year the practicability of the Tehuantepec route may have been fully tested, and its capability to furnish the shortest, cheapest, and safest mail route to California fully demonstrated. The department, by the simultaneous expiration of the contracts on these two routes, will be enabled to determine which one to select, or whether to keep up both, accommodating the mails and the passengers from New York and New Orleans, respectively, but paying according to the amount of mail service rendered.

It is alleged that, by starting this line from New Orleans, correspondence from the Atlantic side will be received nearly one week later than at present, and from California to the Atlantic States in like proportion—that is to say, that whilst letters sent from Boston and New York to California, by Panama, would reach Acapulco about — days after they had been written; others sent from New Orleans, *via* Tehuantepec, to Acapulco would reach them in about — days; thus practically furnishing nearly a weekly mail, instead of a semi-monthly communication, as at present.

The terms of the contract are not yet definitely settled, and, therefore, cannot be set forth; but the department does not anticipate much difficulty in being able to obtain the service on reasonable and satisfactory terms. The authority of this department to make such a contract may be found in the second section of the act of March 3, 1851, which the Postmaster General considers ample and undoubted.

Serious doubts have been expressed as to whether the road has been yet or will be made in time sufficient for the performance of the con-

* It is not here intended that the line is to the *port* of Acapulco, but it is mentioned only as a designation of the place at or near which the two lines are to be merged into one. The legal form of the contract will be for service from New Orleans to San Francisco, both being American ports, and strictly within the act of 1851.

templated service. The department, however, will take care, in making any contract, to provide that where there is no service there shall be no pay, and that no fines or forfeitures shall be remitted for failures arising from a want of a suitable road or for obstacles presented by the insufficiency of river navigation, or of the bays, at either terminus of the transit. If, therefore, the river, bay, or road, shall not be sufficient, the contractors, not the government, will be the losers by it.

The Tehuantepec route has long been a favorite one with the government and people of the United States. No opportunity has been lost in endeavoring to secure it. Having at last secured it, by the terms of the Gadsden treaty, and a reasonable probability now existing that the route has been, or will in a short time be, placed in a condition to receive the service, the department sees no good reason why it should not enter on the enjoyment of those advantages so earnestly desired and so long anticipated by the people and government of the United States.

In proposing to make this contract, the Postmaster General does not intend to decide any controversy which now exists, or may hereafter arise, between rival claimants under the grants or decrees of the Mexican government. Who are the true owners of the right to make the road is left to the proper tribunals to determine. It is enough for the department that parties of undoubted responsibility, claiming to be in possession of the road and to be the lawful owners of it, have proposed to perform the desired service. If in this there shall be any mistake, the contract with the parties will terminate with their loss of the road, and the department be as ready to contract with the successful claimants as with the present ones. In any point of view, it would seem to be the interest of the true owner of this right, whoever he may be, that this contract should be made. It will materially aid in the early completion of the road, and furnish the assurance that after the United States had entered on the use of it, in the transmission of their mails, that no wanton or illegal revocation of the right would be tolerated.

The department, in arriving at the conclusion that the time had come when the mail service of the United States ought to be placed upon this new and additional route, has not been influenced, in the slightest degree, by mere geographical partialities. Rightly considered, there is no rival and separate interests of the north or northeast to be prejudiced by the establishment of this route.

If it be shorter, safer, and more expeditious than other routes, it can and will be adopted by the people of that portion of the United States, both for postal and travelling purposes, as freely and fully as by those of the west and southwest. If it present no such striking advantages, then more southern transits, such as Panama, Chiriqui, Nicaragua, &c., will continue to be used by all the northern or northeastern portion of the Union, whilst that of Tehuantepec would probably be used by the people of the west and of the southwestern States, whose geographical positions rendered it to them the most desirable transit.

I am, very respectfully, your obedient servant,

AARON V. BROWN.

Hon. WM. H. ENGLISH,

Chairman Committee on Post Offices and Post Roads.

transportation. The department, however, will endeavor to make any contract to provide that where there is no service there shall be no pay, and that no fees or charges shall be levied for services rendered except a reasonable rate for the use of the property, and the necessity of river navigation, or of the use of the property, shall not be a condition of the contract. If, therefore, the river, bay, or road, shall not be used, the contractor, not the government, will be the loser by it.

The Tennessee route has long been a favorite one with the government and people of the United States. No opportunity has been lost in endeavoring to secure it. Having at last secured it, by the terms of the St. Louis treaty, and a reasonable probability now existing that the route has been, or will in a short time be, placed in a condition to receive the service, the department sees no good reason why it should not enter on the enjoyment of those advantages so earnestly desired and so long anticipated by the people and government of the United States.

In preparing to make this contract, the Tennessee General does not intend to decide any controversy which now exists, or may hereafter arise, between rival claimants under the grant or desire of the Mexican government. Who are the true owners of the right to make the road is left to the proper tribunals to determine. It is enough for the department that parties of undoubted responsibility, claiming to be in possession of the road and to be the lawful owners of it, have proposed to perform the desired service. It is in their hands to be used, the contract with the parties will terminate with their loss of the road, and the department is as ready to contract with the successful claimants as with the present ones. In any point of view, it would seem to be the interest of the true owner of this right, whoever he may be, that this contract should be made. It will materially assist the early completion of the road, and furnish the assurance that after the United States had entered on the use of it, in the transmission of their mails, that no war or illegal revolution of the right would be tolerated.

The department is arriving at the conclusion that the time has come when the mail service of the United States ought to be placed upon this new and additional route, and has been influenced, in the slightest degree, by more geographical facilities. Highly considered, there is no rival and separate route of the north or south-east to be preferred by the establishment of this route.

It is desirable, under and more expedition than other routes, it can and will be adapted by the people of that portion of the United States, both for postal and travelling purposes, as freely and fully as by those of the west and southwest. It is a route as rich as the advantage of the west and southwest, such as Indian, Chinese, Mexican, and other routes, and will continue to be used by all the northern or northern portion of the Union, while that of Tennessee would probably be used by the people of the west and of the southwestern States, where geographical position renders it to them the most desirable route.

I am, very respectfully, your obedient servant,
AARON V. BROWN.

Wm. H. Emmons,
Chairman Committee on Post Offices and Post Roads.



